

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 66 of 2023

Sri Saran Sarkar, son of Sri Rakhhal Sarkar, resident of Bairagitilla, S.N. Colony, P.S. Jirania, District: West Tripura. (Age-55 years).

.....Appellant

-V E R S U S-

The State of Tripura, to be represented by the Ld. P.P., The Hon'ble High Court of Tripura

..... Respondent.

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

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	11.02.2025
Whether fit for reporting	:	NO

JUDGMENT & ORDER[ORAL]

[T. Amarnath Goud, J]

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

[2] This is an appeal filed under Section-374(2) of the Criminal Procedure Code, 1973 against the judgment dated 28.11.2023 passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with case No. Special (POCSO) 07 of 2021.

[3] Briefly, the factual matrix of the prosecution case, as reflected from the version of the informant in his written ejahar is that on 7th November, 2019 at about 11.00 am while his minor victim-daughter accompanied by her friend namely, Sweetly Mandal were returning home from the Sachindranagar Colony School, at that time, accused Saran Sarkar forcefully dragged his victim daughter into his house, thereupon, accused kept the victim in his room, closed the door of that room and then by

pressing her mouth, accused Saran Sarkar forcefully committed rape upon her. At the time of said incident, the victim was aged about 9 years only and she was reading in Class-III. Subsequently, on that night victim became ill, whereupon, on query victim disclosed about the incident. According to the informant, thereafter he approached the village elders seeking justice and though the informant was assured by them but, ultimately they did nothing in the matter.

[4] Based on the written complaint of the informant, a case was lodged at Jirania PS and accordingly, the investigation started. During investigation the investigating officer [for short, I.O.] after taking up the charge of investigation on 12.11.2019 and subsequent thereto, examine the available witnesses and recorded their statement under Section-161 of Cr. P.C. On 12.11.2019 she arranged for the medical examination of the victim girl from Jirania Rural Hospital, seized one envelope containing vaginal swab samples in connection with this case.

[5] On 13.11.2019, IO of the case visited the PO prepared hand sketch map with separate index, seized the original birth certificate of the victim girl. Proceeding further with the investigation, on 14.11.2019, she arranged for recording of the statement of the victim under Section-164(5) of Cr. P.C. before the learned Judicial Magistrate, Agartala, arranged or sending the victim girl to the Jirania Rural Hospital for the purpose of her determination of age by medical process. Thereafter, on 17.12.2019, she received the medial report of the victim girl. On 16.01.2020, IO arranged for sending of the samples in this case to the SFSL Narsingarh and on 11.03.2020, IO received the SFSL report of this case.

[6] On 14.03.2020, IO arranged for sending of the accused for the potency test at Bishalgar Hospital, as per the order of the learned Court and on the same date, she received the potency test report of the accused person. Thus, after conducting due investigation in this case, IO laid charge-sheet against the accused person in this case namely, Saran Sarkar under Sections-376(2)(i)/506 of IPC and Section-4 of the POCSO Act vide Jirania P.S. CS

No.03 of 2021 dated 28.01.2021 as a prima facie case was well established against the accused person for facing trial in the open Court of law.

[7] During trial, to substantiate the charge prosecution has adduced in total 15 (fifteen) witnesses including the informant of this case mentioned in the appendix attached herewith. The prosecution also relied upon some documentary evidence as well as material object which were also marked as exhibits in connection with the instant case as reflected in the attached appendix. The defence case was that of total denial of the allegation of the prosecution and as such the convict-appellant during his examination under Section-313 of Cr. P.C, pleaded his innocence and denied to adduce any witness in support of his defence.

[8] After hearing both the parties and perusal of the material evidence on record, the learned Court below has observed as under:

“17. In the result, the convict namely, Saran Sarkar stands sentenced to suffer rigorous imprisonment (RI) for 20 (twenty) years and to pay fine of Rs.30,000/- for the offence punishable under Section 6 of the POCSO Act, in default of payment of fine, the convict shall suffer simple imprisonment (SI) for further 6 months and also to suffer rigorous imprisonment (RI) for 1 year and to pay fine of Rs.5,000/- for the offence punishable under Section 363 of the IPC, in default of payment of fine, the convict shall suffer simple imprisonment (SI) for further 1 month.

Both the sentences of imprisonment shall run concurrently.

Since the convict is sentenced under Section 6 of the POCSO Act, no sentence has been passed under Section 376AB of IPC.

18. Fine money, if realized, be paid to the victim as compensation.

19. Period of detention, if any, undergone by the convict during investigation, inquiry or trial shall be set off.

20. The fine money so ordered to be paid is awarded considering the family condition of the victim which in my considered opinion is insufficient for rehabilitation of the victim. I therefore, recommended the state to award adequate compensation to the victim.

21. A copy of the judgment be forwarded to the District Secretary, District Legal Services Authority, West Tripura for assessment of compensation and to award such compensation to the victim in terms of the provisions of victim compensation scheme or any other rules or order made in connection thereto. While awarding compensation regard shall be had to the provisions of Section 33(8) of the POCSO Act as well as Rule 7 of the POCSO Rules.

22. A copy of the judgment shall also be forwarded to the District Magistrate, West Tripura.

23. A copy of the judgment also be furnished to the convict free of cost.

24. Issue conviction warrant.

25. The seized vaginal swab sample be destroyed, after the expiry of period of appeal or decision of appeal, whichever is later or in the mean time, if any appeal is preferred, then as per direction of the Hon'ble Appellate Court.

26. The seized birth certificate, present in the case record be returned, after expiry of the appeal period to the victim or her parents after taking proper receipt and also retain a copy thereof in the record or in the mean time, if any appeal is preferred, then as per direction of the Hon'ble Appellate Court."

[9] The appellant herein, being aggrieved by and dissatisfied with the same, has preferred this appeal before this Court for ends of justice.

[10] Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that the alleged incident occurred on 07.11.2019 and the informant came to know about the same on the night of 07.11.2019. But, the said FIR was made on 12.11.2019 i.e. after a delay of 5 days. Although, the informant mentioned in the written complaint that he was waiting for action to be taken by the village elders, but no evidence was taken from any of said village elders and none of them deposed before the learned Court and in absence of the same, no corroborative deposition of the informant's version can be deduced, as most of the prosecution witnesses are relatives of the informant.

[11] The learned Court below has failed to appreciate the fact that the victim in her statement recorded by the learned Magistrate on 13.11.2019 mentioned that the appellant used to go to the victim's house in absence of her parents but the said deposition has not never been reiterated again ever thereafter by any of the prosecution witnesses. Such glaring inconsistency on the face of it, makes it apparent, that the victim was tutored before her statement was recorded by the Magistrate, as the said averments did not come up in any of her subsequent depositions.

[12] On the other hand, Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State has vehemently opposes the submission made by the learned counsel appearing for the appellant has submits that the observations as made by the learned Court below is just and proper and appeal needs to be dismissed as the alleged crime is heinous in nature.

In view of above and having gone through the material evidence and the finding of the learned Court below, to come to a definite conclusion, let us revisit the evidence once again.

[13] PW-1, who is the father of the victim, as well as, informant of the instant case deposed that on 07.11.2019, while his daughter was returning from her school at about 11.00 a.m, at that time, the accused person namely, Saran Sarkar kidnapped her and took her to his dwelling house at Bairagi Tilla and thereupon, accused committed rape upon his minor daughter, aged about 9 years who was a student of Class-III. According to the witness, the date of birth of his daughter is 10.06.2010. Witness continued to depose that being aggrieved by for the aforesaid incident; he lodged a written ejahar before the OC, Jirania PS on 12.11.2019, which was scribed by one of his relative. Accordingly, after being reduced in writing informant put his signature upon it and the signature of the witness on identification was marked as Exhibit-1/1. Witness during his evidence also identified the accused in the dock, in the Court.

[14] PW-2, mother of the victim in her statement deposed before the Court that on 07.11.2019, while her daughter was returning from her school named as Sachindranagar High School, at about 11.00 am, at that time, the accused person namely, Saran Sarkar kidnapped her and took her to his dwelling house at Bairagi Tilla and thereupon, the said accused committed rape upon her minor daughter, aged about 9 years who was a student of Class-III. The date of birth of her daughter is 10.06.2010. According to the witness, being aggrieved by the same, her husband lodged a written ejahar before the OC, Jirania PS on 12.11.2019. Witness further deposed that during investigation, the IO seized one original birth certificate of her daughter by preparing a seizure list, whereupon, witness put her signature on the same as a producer and on identification, the signature of the witness on the seizure list dated 13.11.2019, was marked as Exhibit-2/1. Further, the said birth certificate of the victim, on identification by the witness was marked as Exhibit-MO.1. The witness, during her evidence also identified the accused present in the dock, in the Court.

[15] PW-3, the victim deposed that her father is the informant of the instant case. On 07.11.2019, while she was returning after attending her school, thereupon on the way, the accused namely, Saran Sarkar kidnapped her and took her in his dwelling house and committed rape upon her after closing the door of the room. Witness continued to depose that after lodging the case by her father, one day police produced the witness before the Magistrate whereupon her statement was recorded and her signatures were taken on a paper and with reference to that the witness identified her signatures on the statement recorded by the Magistrate under Section-164(5-A) of the Cr.PC and the same was marked as Exhibit-3/1 series. Victim in her examination-in-chief also stated that one day, she was sent to the Jirania Hospital, whereupon, her medical examination was conducted. Lastly, the witness duly identified the accused Saran Sarkar while his picture was shown to her through a mobile phone display.

[16] PW-5 deposed that on 12.11.2019, she was posted at Jirania PS as constable of police. On that day, WSI Paramita Saha seized one white coloured envelope containing vaginal swab of victim in connection with Jirania P.S. Case No.2019/JRN/102 in presence of this witness by preparing a seizure list dated 12.11.2019 and obtained her signature on the said seizure list as a witness. On identification, the signature of the witness on the seizure list dated 12.11.2019 was marked as Exbt.5/1 and the seized white coloured envelope was marked as Exbt.MO/2.

[17] PW-6 deposed that during the January month of 2019 one day at about 10 to 10.30 am, witness herself and her friend i.e. the victim girl were coming back from their school and when they reached near their house, at that time, accused Saran Sarkar caught hold of the hand of witness and also of her friend. According to the witness, she then gave a bite with her teeth on the hand of the accused Saran Sarkar and ran away from there and the accused then took away her friend i.e. the victim girl.

[18] PW-7 deposed in her examination-in-chief that on 13.11.2019, she was posted as woman constable in the Jirania P.S. On the said date, the IO of this case seized the original birth certificate of the victim girl whereas

the date of birth of the victim girl was mentioned as 10.06.2019 and the seizure was made in her presence. The witness during her evidence also identified her signature over the seizure list dated 13.11.2019 which was marked as Exbt.2/2.

[19] PW-11 deposed that he was posted in the section of Registrar of Births and Deaths, Jirania, Rural Hospital, West Tripura, as MPW. Witness continued to depose that on the day of his evidence before the Court, he brought the Labour Register of Jirania Rural Hospital, where the date of birth of the victim girl was mentioned. According to the witness, upon comparing the original Labour Register, as aforesaid, it is found that it is present as per their official records that the date of birth of the victim girl is 10.06.2010.

[20] PW-15 deposed that on 14.03.2020, he was posted as Emergency Medical Officer in the Bishalgar Sub-Divisional Hospital. On the said date, witness conducted the potency test of the accused Saran Sarkar in connection with this case, who was brought and identified by woman SI of Jirania PS Paramita Saha. Witness continued to depose that upon conducting the potency test of the accused Saran Sarkar opined that 'After careful examination of Saran Sarkar, 50 years/male, S/O Late Rakhal Sarkar of S. N . Colony, Bairagi Tilla, P.S. Jirania it has revealed that he is sexually potent and is capable for sexual intercourse.'

[21] PW-15 is the investigating officer who deposed that on 12.11.2019 she was posted as SI of police in the Jirania PS. On that day, O/C Babul Das of Jirania PS received one written complaint from the informant Sri Malu Das Baishnab and thereafter, registered the same as Jirania PS Case No. 2019/JRN/102, dated 12-11-2019, Under Section 376(2)(i) of IPC and Section 4 of the POCSO Act. According to the witness, she is acquainted with the hand writing and signature of O/C Babul Das of Jirania PS. Accordingly, the witness identified the registering note along with signature of O/C Babul Das of Jirania PS over the written FIR which was marked as Exbt. 1/2 as a whole. The witness also identified the printed FIR form duly filled in by O/C Babul Das of Jirania PS which was marked

as Exbt. 10 as a whole and the signature of O/C Babul Das of Jirania PS over the same were marked as Exbt. 10/1.

[22] Witness further deposed that she was endorsed the investigation of this case by the said O/C Babul Das of Jirania PS on the same date itself. Accordingly, she took up the charge of investigation on 12-11-2019 and examined the available witnesses namely Sri Malu Das Baishnab and Uma Adhikari and recorded their statements U/S 161 of CrPC. On the same date, IO arranged for the medical examination of the victim girl from Jirania Rural Hospital, seized one envelope containing vaginal swab samples in connection with this case with reference to that the witness identified the seizure list dated 12-11-2019 which was marked as Exbt. 5 as a whole and the signature of the witness over the same were marked as Exbt.5/3. The witness also confirmed Exbt. MO 2. Proceeding further, the IO deposed that on 13-11-2019, she visited the PO, prepared hand sketch map with separate index. The hand sketch map of the PO as identified by the witness was marked as Exbt.11 and the signature of the witness over the same was marked as Exbt. 11/1. The separate index attached to the hand sketch map was marked as Exbt. 12 and the signature of the witness over the same was marked as Exbt.12/1. On the same date, witness also examined the victim(name withheld) and the available witnesses namely, Sweety Mandal and Namita Kapali and recorded their statements U/S 161 of CrPC. Thereafter, on 13-11-2019, IO of the case seized the original Birth certificate of the victim girl and thus, the witness identified the seizure list dated 13-11-2019 which was marked as Exbt.2 as a whole and the signature of the witness over the same was marked as Exbt.2/4. The witness confirmed Exbt. MO 1. Again, the witness deposed that on 14-11-2019, she arranged for recording of the statement of the victim U/S 164(5) of Cr.P.C. before the Learned Judicial Magistrate, Agartala, arranged for sending the victim girl to the Jirania Rural Hospital for the purpose of her determination of age by medical processes.

[23] Thereafter, on 17-12-2019, IO received the medical report of the victim girl. Proceeding further, on 16-01-2020, witness arranged for sending of the samples in this case to the SFSL Narsingarh and then on 11-

03-2020, she received the SFSL report of this case. Witness further deposed that on 14-03-2020, she arranged for sending the accused for the potency test at Bishalgar Hospital, as per the order of the Learned Court and on the same date, she received the potency test report of the accused person. Lastly, the witness stated that thus, after conducting due investigation in this case, she submitted the charge-sheet against the accused person in this case namely, Saran Sarkar U/S 376(2)(i)/506 of IPC and Section 4 of the POCSO Act vide Jirania PS CS No.03/21 dated 28-01-2021 as a prima facie case was well established against the accused person. The witness also during her evidence identified the accused person namely, Saran Sarkar who was present in the dock.

[24] Under rule-12(3)(b) it is specifically provided that only in the absence of alternative methods described under 12(3) (a)(i) to (iii) of Juvenile Justice Rule, the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered opinion, the same yardstick can be rightly followed by the Courts for the purpose of ascertaining the age of a victim as well. Applying the said provision in the given case, the IO has seized the original Birth Certificate of the victim girl. PW-2 mother of the victim girl deposed that during investigation, the IO seized one original birth certificate of her daughter.

[25] Now, we are to see what offence, if any, has been committed by the accused person. PW-3 the victim girl being a child on the date of recording of her evidence, her maturity of understanding was tested by the Court and after being satisfied that she is a person of maturity at par her age and is able to give statement before the Court, her evidence was recorded. She stated that returning after attending her school, on the way the accused appellant kidnapped her and took her in his dwelling house and committed rape upon her after closing the door of the room. Her father has deposed that while his daughter was returning from her school the accused appellant kidnapped her and took her to his dwelling house and thereupon committed rape. PW-2, the mother of the victim also deposed same as PW-1.

[26] The victim girl is the only eye witness of this case, so far as the alleged offence of rape is concerned. Sexual offences, generally take place secretly and taking the advantage of the loneliness of the victim and for that in normal parlance, only the prosecutrix i.e. the victim becomes the only eye witness of the occurrence.

[27] The Hon'ble Apex Court in number of cases has held that the conviction for offence under Section-376 of IPC can be based on the sole testimony of a rape victim is a well-settled proposition. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed that speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

[28] A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact victim of a crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section-IIB of the Evidence Act and her evidence must receive the same weight as is attached to an injured in case of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feel satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated

in the Evidence Act similar to illustration (b) to Section-114 which requires it to look for corroboration.

[29] The Hon'ble Apex Court further held that regarding corroboration of the ocular evidence of the victim with that of medical evidence or medical opinion there can be no dispute to the settled position of law that an accused can be convicted for rape even if there are no injuries on the private part of the victim and the absence of injury does not amount to consensual sex. A Bench of Justices v. Sirpukurand R.M Lodha had ruled that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.

[30] It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

[31] It has been contended by the learned counsel appearing for the appellant that the village persons are not examined as they were vital to the facts and circumstances of the case. But, it can safely be said that non-examination of some persons per se does not corrode vitality of prosecution version, particularly when the witnesses examined have withstood incisive cross-examination and pointed to the respondents as the perpetrators of the crime. Applying the aforesaid principle in the given case, it is found that the prosecution witnesses of this case specially the victim girl and her friend i.e. PW-6 have withstand the cross-examination by the defence before the Court below and they remained firm in their version throughout and thus, non-examination of some other witnesses, as aforesaid, will be of no aid.

[32] In the present case, the victim girl is a mere child of 9 years of age. It is quite natural that her parents at the first instance would inform about the offence to the local panchayet, to redress their grievance and they would hesitate to go to the police and lodge a case thinking about the future life of their daughter. This Court is of the opinion that there has been sufficient reason regarding causing of delay in the present case and therefore, on this count of delay in lodging the FIR, a well-established prosecution case cannot be thrown out.

[33] In this the prosecution has successfully discharged the bounded duty of establishing the fundamental facts against the accused. The accused could not at all rebut the presumption under Section-29 and 30 of the POCSO Act and there is nothing present before the Court from the evidence on record that the accused has not committed the offence.

[34] Here in the case at hand, we have discussed the evidence on record of the prosecution in detail. Now we are to conclude our decision on the basis of material evidence on record. In our ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the appellant to be disbelieved. All the witnesses supported the entire case of the prosecution with regard to the commission of offence by the appellant herein.

[35] The Court below has passed the order of conviction and sentence under Section-6 of the POCSO Act. The same is extracted as under:

“17. In the result, the convict namely, Saran Sarkar stands sentenced to suffer rigorous imprisonment (RI) for 20 (twenty) years and to pay fine of Rs.30,000/- for the offence punishable under Section 6 of the POCSO Act, in default of payment of fine, the convict shall suffer simple imprisonment (SI) for further 6 months and also to suffer rigorous imprisonment (RI) for 1 year and to pay fine of Rs.5,000/- for the offence punishable under Section 363 of the IPC, in default of payment of fine, the convict shall suffer simple imprisonment (SI) for further 1 month.....”

For better appreciation, Section-6 of the POCSO Act is extracted as under:

“6. Punishment for aggravated penetrative sexual assault- (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to pay fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

In the facts of the present case Section-4 of the POCSO Act applies and for the purpose of reference Section-4 of the POCSO Act may be reproduced hereunder:

“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.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

[36] Hence, the conviction and sentence as held by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with case No. Special (POCSO) 07 of 2021, stands affirmed only Section-6 of the POCSO Act under which the conviction has been awarded will be converted in to Section-4 of the POCSO Act and rest of the conviction shall remain unaltered.

[37] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash