

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.(J) 67 of 2023

Nijam Miah @ Bulu
Son of Babul Miah
Resident of Fotamati, PS: R.K. Pur
Gomati, Tripura

---Appellant(s)

Versus

The State of Tripura
To be Represented by its Ld. Public Prosecutor,
High Court of Tripura.

---Respondent(s)

For Appellant(s)	:	Mr. Samarjit Bhattacharjee, 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 Criminal Procedure Code, 1973 against the Judgment, dated, 27.09.2023 and sentence dated 30.09.2023 passed by the Ld. Special Judge, Gomati Judicial District, Udaipur in Case No-Special (POCSO) 23 of 2021 whereby and where under the Ld. Special Judge, convicting the appellant for committing the offence punishable under Sections- 342/376(2)(n)/506 of IPC & Section-6 of POCSO Act, 2012 and sentencing him to suffer R.I. for 20 years and to pay a fine of Rs.10,000/-, in default for payment of fine, to suffer R.I. for 6 months for his conviction under Section 6 of the POCSO Act; & further sentence of R.I. for 1 year and to pay fine of Rs.1000/-, in default of payment of fine, to suffer R.I. for 1 month for his conviction u/s 506 of IPC; & further sentence of R.I. for 6 months and to pay fine of Rs. 500/-, in default of payment of fine, to suffer RI for 15 days for his

conviction U/s- 342 of IPC, with the rider, that, the sentences shall run concurrently.

[3] The compendious fact as enumerated from the FIR lodged by one Bacchu Miah is that about nine months back their neighbour Nijam Miah in absence of elders in the house called his sister R (name withheld) to his house and after confining her in his room he committed rape on her against her will. He also threatened her to kill if she discloses the matter to any body and in this way he continued to have sex with his sister for the last nine months. Prior to two months back he also committed rape on his sister. Presently, his sister carrying for 6/7 months.

[4] On receipt of the written complaint, O/C of R.K.Pur Women P.S. registered FIR No. 46 of 2021 dated 26.07.2021 under Section 342/376(2)(n)/506 of IPC and Section 4 of POCSO Act and put WSI Sumitra Kapali the charge of investigation. The I/O on completion of investigation submitted charge-sheet against the accused person namely, Nijam Miah @ Bulu under Sections 376(2)(n)/506 of IPC and Section 6 of the POCSO Act.

[5] On receipt of charge-sheet, cognizance of offence was taken under Sections 376(2)(n)/506 of IPC and Section 6 of the POCSO Act. The accused person was supplied with the copies of incriminating papers u/s 207 CrPC and, thereafter, formal charge was framed by my Ld. predecessor against the accused person namely, Nijam Miah @ Bulu under Sections 342/376(2)(n)/506 of IPC and Section 4 of the POCSO Act. The contents of the charge were read over and explained to the accused person in Bengali to which he pleaded not guilty and claimed to be tried.

[6] It appears that my Ld. Predecessor in Office framed charge against the accused persons mentioning Section 4 of the POCSO Act, though the contents

of the charge reflect the offence of Section 6 of POCSO Act. Since the contents of the charge reflect the offence under Section 6 of POCSO Act, it can be said that due to typographical mistake it was mentioned as Section 4 of the POCSO Act.

[7] In course of the trial the prosecution has examined total 19 witnesses and proved some documents details of which are given in the format of the title page. Upon closure of prosecution evidence the accused person was examined under section 313(1)(b) of Cr.P.C. to which he denied the veracity of all the prosecution evidence and expressed his willingness to adduce defence evidence. In support his defense the accused examined 2 witnesses.

[8] Thereafter, the learned court below by the order dated 30.09.2023 passed the impugned order which is reproduced herein under:

Order of Sentence

6. The convict Nijam Miah (A1) is hereby sentenced to suffer Rigorous Imprisonment for 20(twenty) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) for his conviction under Section 6 of the Protection of Children from Sexual Offences Act, 2012. In default of payment of the fine he shall suffer further R.I. for six months.

He is also further sentenced to suffer Rigorous Imprisonment for 6(Six) months and to pay a fine of Rs.500/- (Rupees Five Hundred) for his conviction under Section 342 of the Indian Penal Code. In default of payment of the fine he shall suffer further R.I. for 15 (fifteen) days.

He is also further sentenced to suffer Rigorous Imprisonment for 1 (one) year and to pay a fine of Rs.1,000/- (Rupees One Thousand) for his conviction under Section 506 of the Indian Penal Code. In default of payment of the fine he shall suffer further R.I. for 1(one) month.

Both the sentences shall run concurrently.

The period of detention undergone by the convict shall be set off against the term of imprisonment as per provision of section 428 of the Cr.P.C.

The fine money if realized shall be paid to the victim.

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

[10] It is contended by the counsel for the appellant that Ld. Special Judge failed to appreciate the evidence judiciously in accordance with the well

settled principle of criminal jurisprudence as to how the evidence is to be appreciated. He further contended that findings of the Ld. Trial Court to the effect, that, the Appellant committed offence punishable under section Sections-342/ 376(2)(n)/506 of IPC & Section-6 of POCSO Act, is based on surmise and conjecture and inference and as such it is liable to be interdicted by this Court in exercise of appellate power provided under section 374 of Cr.P.C.

[11] He further contended that Ld. Trial Court ought to have disbelieved the statement attributed to the victim girl as there was absolutely no evidence to inspire confidence in respect to admissibility of such statement. He further contended that Ld. Trial Court completely ignored the material contradiction in the prosecution evidence and as a result thereof came to a perverse finding. Finally, learned counsel for the appellant prayed to allow his appeal by setting aside the impugned order.

[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-13-Dr. Subhankar Nath, Deputy Director, DNA Typing Division SFSL wherein the PW-13 has stated as under:

- (1) R is the biological mother of new born baby;
(2) Nijam Miah is the biological father of new born baby.

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

[16] The informant of this case (PW.8) has deposed that about 8/9 months back he saw his younger sister Rupali Begam ill and her stomach showed a baby bump and on enquiry she revealed that she was called in the house of accused where she was raped. The accused threatened her with dire consequences and blackmailed her and she was also raped many times thereafter. On hearing about her reply he went to R.K.Pur Women P/S and lodged an FIR. Police seized the birth certificate of his sister R from his possession and he signed the seizure list. He identified the accused in the Court who is previously known to him. His sister delivered a baby boy. The accused was married while prior to this incident.

[17] In cross-examination he stated that the FIR was submitted at around 7-30 p.m. He was accompanied by his sister (victim) to the P/S. After lodging of FIR there was some medical procedure under supervision of police conducted by doctors and, thereafter, they went home at around 10 p.m. Police came to their house after about 2 days of lodging FIR. There is a road that abuts the house of accused and their house. In the house of the accused Martin Miah, Hasan Miah, Farid Miah and Mohan Miah also stay. The number of family members of the household of the accused is around 25. the victim is his step-sister and her mother died about 4/5 years back. The wife of accused is Ruma Begam. The rest part of his cross-examination consists of some formal denials.

[18] PW.9 Smt. R, the victim, stated that about 6/7 months prior to lodging of the case, their neighbour Nijam Miah called her to his house where none of his family members including his wife were present and there he disrobed her and had sexual intercourse with her against her consent. On a few subsequent occasion also, he blackmailed her to come to his house and forced her to submit to sexual intercourse. On the date of lodging of the case, she was ill and on repeated inquiry of her brother as to how it happened she narrated the incident to

him. She did not inform anybody else earlier because the accused threatened to kill her. Because of this sexual intercourse she became pregnant and she has delivered a baby boy about 6/7 months back who is now in a Home. She further stated that after lodging of the case she was medically examined by the doctor and she was also produced before the Magistrate where her statement was recorded.

[19] She stated in her cross-examination that police came to her house 2/3 days after filing of the case. The accused is her uncle by relation. Her family consists of her step brother and his wife. Her sister- in law is a house wife. She always informed before leaving the house. There are about 20 persons in the house of the accused. During corona her school was closed. She is not aware who wrote the FIR or its contents thereof. They used to stay in the house of Nijam Miah before shifting to their present. She does not know anybody named Mamun Miah. The accused got married in December, 2020 and she knows his wife. She used to visit as and when called for. Except some formal denials there is nothing in the rest part of her cross-examination.

[20] PW.5 Razina Begam stated that about 7/8 months ago the younger sister of her husband namely, R was vomiting and on being asked R told her that for about 6/7 months her periods have stopped and she also told her that their neighbours Nijam Miah forcibly had intercourse with her in absence of others. R also told her that he threatened to kill her if she revealed the matter to anybody. She stated that the victim is aged 14 years and she gave birth to a baby boy who is in shelter home and the accused Nijam Miah is married with children.

[21] During investigation of the case the I/O (PW.18) collected biological samples of the accused, victim and her new born baby and she sent the sample to the FSL for DNA examination and on this the prosecution examined

the Forensic Expert (PW.13) who performed the DNA examination and it returned the following result qua Ext.P13 :-

- (1) R is the biological mother of new born baby;*
- (2) Nijam Miah is the biological father of new born baby of Miss R.*

So, the forensic opinion regarding DNA clearly establishes the fact that the victim was carrying pregnancy caused by the accused Nijam Miah.

[22] Apart from this, the DW.1, elder brother of the victim also admitted that the accused was familiar to his sister (victim) and his sister became pregnant from accused Nijam Miah. DW.2, the mother of the accused also admitted the relationship between the accused Nijam Miah and the minor victim girl.

[23] According to the victim, after committing rape the accused threatened to kill her if she disclosed the matter to any body and out of fear she submitted herself to him and on several occasions the accused committed rape on her against her will. DW.1 stated that Nijam Miah started relation with R with her consent. Consent of a minor below 16 years is totally irrelevant.

[24] 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.

[25] The trial court has rightly appreciated the evidence and convicted the appellant under Sections 342/376(2)(n)506 of IPC and 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.

[26] Accordingly, the appeal is dismissed. The Judgment dated, 27.09.2023 and sentence dated 30.09.2023 passed by the Ld. Special Judge, Gomati Judicial District, Udaipur in Case No-Special (POCSO) 23 of 2021 stand 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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