

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 2 of 2025

Sri Rupak Debnath, aged about 50 years, son of late
Sudhan Debnath, resident of North Manu Bankul, P.S.
Sabroom, District- South Tripura.

..... Appellant(s).

Versus

The State of Tripura

..... Respondent(s)

For the Appellant(s) : Mr. Sankar Lodh, Advocate
Mr. Kishalay Roy, Advocate
Mr. Subham Majumder, Advocate

For the Respondent(s) : Mr. Raju Datta, P.P.

Date of hearing and delivery
of judgment & order : 24.02.2026.

Whether fit for reporting : No.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER (ORAL)**

[Dr.T. Amarnath Goud, JJ]

[1] Heard Mr. Sankar Lodh, learned counsel appearing on behalf of the appellant. Also heard Mr. Raju Datta, learned P.P. representing the State respondent.

[2] The present appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the impugned Judgment of Conviction and Order of Sentence dated 26.11.2024, passed by the learned Special Judge,

South Tripura, Belonia, in Special (06) POCSO of 2023, whereby the learned Special Judge, South Tripura, Belonia, convicted the appellant for committing offences, punishable under Sections 376 AB of Indian Penal Code and Sections 6 and 10 of POCSO Act, and sentenced him to suffer Rigorous Imprisonment for 20 (twenty) years and to pay a fine of Rs. 10,000/- with default stipulations for committing offence, punishable under Section 6 of POCSO Act; and further sentenced him to suffer Rigorous Imprisonment for a period of 5(five) year and to pay a fine of Rs. 2,000/- with default stipulations for committing offence, punishable under Section 10 of POCSO Act. It has been further ordered by the learned Court below that both the sentences shall run concurrently.

[3] The prosecution story in brief is that on 17.03.2023, the mother of the victim lodged a written complaint before the Officer-in-Charge of Sabroom police station alleging inter alia that her daughter, aged about 4 years, used to call the appellant as 'Mama' (maternal uncle) as he is one of the neighbours of the informant and on 16.03.2023 at around 12.30 p.m. the victim on returning to their dwelling house informed the informant that the accused, appellant herein gave bite on her nipples and the informant observed reddish bite marks therein. The victim further narrated the informant that the appellant got his finger with his saliva and penetrated the finger into the private part of the victim and thereafter the informant reported the matter to one local elderly, namely, Rabin Chandra Pal seeking redress but, nothing was done and thereafter, she lodged the written complaint before the Officer-in-Charge, Sabroom police station.

[4] On receipt of the aforesaid complaint, Officer-in-Charge of Sabroom PS registered a case against the appellant vide Sabroom PS case No. 2023/SBM/015, under Sections 376(3) of the Indian Penal Code and Section 6 of the POCSO Act. It is contended in the present appeal that after registration of the case, police arrested the appellant on 17.03.2023 and forwarded him before the learned Court below on 18.03.2023 and he was in custody for a substantial period.

[5] Investigation of the case was endorsed to an SI hereinafter referred as the I/O. It is seen from the impugned order dated 26.11.2024 that during investigation, medical examination of accused as well as the victim was arranged by I/O. The informant and victim, being produced before the Court of learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura, their statements were recorded under Section 164(5) of Cr.P.C. After completion of investigation, police filed charge sheet on 30.04.2023 against the appellant for committing offences punishable under Sections 376(3) of the Indian Penal Code and Section 6 of the POCSO Act. On receipt of the charge sheet, learned Court of Special Judge (POCSO) framed charge against the appellant for committing offences punishable under Sections 376 AB of the IPC and Sections 6 and 10 of the POCSO Act.

[6] To prove the case, the prosecution side examined as many as 15 (fifteen) witnesses and on the other hand, from the side of the appellant, he did not adduce any witness.

[7] Thereafter, learned Court below upon hearing the arguments advanced by the parties and on perusal of material evidence on record, has decided the case vide its impugned Judgment of Conviction and Sentence dated 26.11.2024 passed in Special (06) POCSO of 2023, in the following manner:

“.....ORDER

[7] In the result, the convict Rupak Debnath is sentenced to suffer rigorous imprisonment for 20 (twenty) years and to pay a fine of 10,000/-for the offence punishable under Sec.6 of POCSO Act, in default, to suffer simple imprisonment for two months. The convict is further sentenced to suffer rigorous imprisonment for 05 (five) years and to pay a fine of 2,000/- for the offence punishable under Sec. 10 of POCSO Act, in default, to suffer simple imprisonment for one month. Both the sentence shall run concurrently. If the fine money is paid, the same be handed over to the victim as compensation.

[8] The period of detention undergone by the convict during investigation, enquiry and trial shall be set off from the sentence so awarded.”

[8] Aggrieved by the aforesaid impugned Judgment of conviction and sentence dated 26.11.2024 passed by the learned Special Judge, South Tripura, Belonia, in Special (06) POCSO of 2023, the appellant herein has preferred the instant appeal seeking the following reliefs:

“ Under the circumstances stated above it is most humbly prayed that Your Lordships would be graciously pleased to admit the appeal, call for the records, and thereafter, set aside the impugned Judgment of Conviction and Sentence dated 26.11.2024, passed by the Ld. Special Judge, South Tripura, Belonia, in SPECIAL (06) POCSO of 2023, whereby the Ld. Special Judge, South Tripura, Belonia, convicted the appellant for committing offences, punishable under Sections 376 AB of Indian Penal Code and Sections 6 and 10 of POCSO Act, and sentenced him to suffer *Rigorous Imprisonment for 20 (twenty) years and to pay a fine of Rs.10,000/-, in default of payment of fine he shall suffer Simple Imprisonment for 2(two) month* for committing offence, punishable under Section 6 of POCSO Act; and further sentenced him to suffer Rigorous Imprisonment for a period of 5(five) year and to pay a fine of Rs 2,000/-, in default to suffer further Simple Imprisonment for 1(one) year for committing offence, punishable under Section 10 of POCSO Act, and acquit the appellant from the charges, and pass any other Order(s) as may be deemed fit and proper for fair ends of justice;.....”

[9] Mr. Sankar Lodh, learned counsel for the appellant submits that learned Court below committed error while passing the impugned Judgment of Conviction and Sentence. He contends that learned Court below failed to appreciate that the prosecution has failed to bring home the charges brought against the appellant and according to him, the learned Court below ought to have acquitted the appellant since the prosecution has failed to prove the charges beyond the shadow of reasonable doubts. He further contends that learned Court below misread the evidences on record and held that the appellants had committed offences punishable under Section 376 AB of Indian Penal Code and Sections 6 and 10 of POCSO Act. He submits that in the deposition of witness as P.W.2, it was mentioned that the witness is a minor and she is not in a position to understand the meaning of oath and so oath is not

given to her. In the cross-examination part of the said deposition, it is reflected that the witness is not in a position to say that whether she is tutored by her mother or not and learned counsel wants to give denial and the witness of such a tender age cannot understand denial also. But, while recording the victim's statement under Section 164(5) of Cr.PC, the victim faced no difficulty due to her tender age.

[10] It is contended on behalf of the appellant that learned Court below failed to appreciate the contradictions of the evidences of the prosecution witnesses in accepting the prosecution version. Mr. Lodh, learned counsel submits that from the story of the prosecution, it is found that there are so many contradictions, but, the learned Court below failed to appreciate the same and passed the impugned judgment of conviction and sentence. He further submits that learned Court below committed serious error in accepting the version of PW-1 (informant), PW-2 (alleged victim) and PW-3(aunt). In spite of there being contradictions, the learned Court below accepted the contradictory versions of PW-1, PW-2 and PW-3 and convicted the appellant for allegedly committing offences punishable under Section 376AB of the IPC and Sections 6 and 10 of the POCSO Act.

[11] Mr. Lodh, learned counsel submits that the medical evidence does not support the prosecution version since if the version of medical evidence is accepted then it would be found that the deposition of PW-1, PW-2 and PW-3 are concocted and not true. As per PW-1 and PW-3, they found bite marks on the nipple of the alleged victim but, on the next day when the alleged victim was examined by the Doctor i.e. PW-11, he did not find any bite injury on the breast/nipple and/or private part of the victim girl. As per the version of PW-1 and PW-3, the victim girl informed them that she was feeling pain in her private part but, at the time of medical examination by PW-11, he did not find any injury on the private part of the alleged victim. It is submitted on behalf of the appellant that that as the victim is aged about 4 years, she ought to have

sustained injuries on her private part if an adult man did fingering on her private part. Learned counsel for the appellant submits that on the aforesaid analogy, it appears that the story of the prosecution is not trustworthy and the learned Court below failed to appreciate the same and convicted the appellant. He further contends that learned Court below committed serious mistake in accepting the version of the alleged victim (PW-2) since she was aged about 4 years and she could easily be tutored by any person and in the instant case none of the prosecution witnesses except PW-1, PW-2 and PW-3 supported the prosecution case. PW-1 stated that she informed the aforesaid incident to local elderly, namely, Rabin Chanda Pal (PW-7) but, said Rabin Chandra Pal did not support the prosecution case and hence version of the prosecution witness creates a serious doubt but, learned Court below failed to appreciate the same and convicted the appellant for committing the offences punishable under Section 376AB of the IPC and Sections 6 and 10 of the POCSO Act. It is also submitted on behalf of the appellant that since prosecution has not been able to prove their case, provisions of Sections 29 and 30 of the POCSO Act is not applicable but, in convicting the appellant, learned Court below heavily relied upon Sections 29 and 30 of the POCSO Act.

[12] Learned counsel for the appellant further submits that the appellant was entitled to get a sum of Rs.8,000/- from the informant and as he pressurized the informant to return Rs.8,000/-, she in connivance with PW-3, who is her close relative, may have tutored PW-2 and lodged a false case against the appellant, but, learned Court below failed to appreciate the same. He, therefore, urges this Court that the impugned judgment of conviction and sentence passed by the learned Court below is liable to be interfered with/set aside

[13] During the course of argument, to support his contention, Mr. Lodh, learned counsel for the appellant has placed reliance on the judgments of the Hon'ble Apex Court, the relevant contents from the said judgments referred by the learned counsel is extracted as under:

I. *Aejaz Ahmad Sheikh v. State of Uttar Pradesh and another* reported in 2025 SCC OnLine SC 913:

“.....10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

(emphasis added).....”

II. *Agniraj and others etc. v. State through Deputy Superintendent of Police CB-CID* reported in AIR 2025 SC 2674:

“.....25. Now, we come to the evidence of PW-9 (Nikila). The law is well settled that before proceeding to record the evidence of a minor witness, preliminary questions must be asked by the Court to ascertain whether the witness is able to understand the questions and answer the same. The Court must be satisfied about the capacity of the minor to understand the questions and answer the same. In this case, the age of PW-9 (Nikila) was 10 years. However, preliminary questions were not put to the witness. The Court did not ask any question to the witness to ascertain whether she understands the importance of an oath. Without satisfying himself that the witness understands the importance of an oath, the learned Trial Judge administered oath to her. It is very well known that child witnesses are susceptible to tutoring and therefore, not asking preliminary questions to the minor witness makes her evidence very vulnerable.

26. The witness states that she was able to identify the persons who attacked them on that day. She stated that she had not identified the persons earlier whom she was now identifying in the Court. The witness identified some of the accused sitting in the Court. She stated that she was seeing them for the first time after the date of the incident. Admittedly, test identification parade was not conducted. She stated that her mother told her in detail what had happened to her and how many days she was in the hospital.

27. As noted earlier, PW-9 (Nikila) was 10 years old on the date of recording of evidence. The Trial Court has not followed the condition precedent before examining a minor witness. Before administering oath, the learned Trial Judge did not satisfy himself that the witness understood the importance of the oath.

28. Moreover, she deposed that after the date of occurrence, for the first time in the Court, she identified several accused. But test identification parade was not held. From the answers given in the cross-examination that her mother told her the details of what happened to her, the possibility of tutoring the witness cannot be ruled out. Minors are prone to tutoring and in

this case, we are dealing with a minor child who was 10 years old.*****

31. As far as PW-9(Nikila) is concerned, we have already recorded reasons for discarding her testimony. Since the condition precedent for recording of statement of PW-9 (Nikila) for evidence has not been satisfied, her testimony has to be kept out of consideration.....”

III. *Yerumalla Latchaiah v. State of A.P.* reported in (2006) 9 SCC 713:

“.....3. In the present case, age of the victim was only eight years at the time of alleged occurrence. Immediately after the occurrence, she was examined by Dr. K. Sucheritha (PW7) who has stated in her evidence that no injury was found on any part of the body of the victim, much less on private part. Hymen was found intact and the doctor has specifically stated that there was no sign of rape at all. In the medical report, it has been stated that vaginal smears collected and examined under the microscope but no sperm detected. The evidence of the prosecutrix is belied by the medical evidence. In our view, in the facts and circumstances of the present case, the High Court was not justified in upholding the conviction.....”

IV. *Radhu V. State of Madhya Pradesh* reported in (2007) 12 SCC 57:

“.....6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a "rape", if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to

get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.....”

[14] On the contrary, Mr. R. Datta, learned P.P. appearing for the State vehemently opposes the submissions made on behalf of the appellant. He contends that learned trial Court below on perusal of all the relevant records and examining all the relevant witnesses has decided the case by its judgment of conviction and sentence dated 26.11.2024 passed in Special (06) POCSO of 2023 and the same should not be interfered with. He submits that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction can be formed basing upon only the sole testimony of the victim. In the present case, the age of the victim is only 4 years and her deposition as P.W.2 and the statement recorded under Section 164(5) Cr.PC are almost identical and there has been no serious contradiction. Moreso, the medical reports also clearly indicate that the minor victim was sexually assaulted by the accused appellant. He, further submits that recording of statement under Section 164(5) Cr.PC and cross-examining a 4 years old minor girl by the defence wanting her to give denial, stand entirely on a different footing. A child of such tender age is highly susceptible to fear and confusion and therefore cross-examination for a minor child of 4(four) years cannot be equated with a mature. He, therefore, urges this Court to dismiss the instant appeal filed by the appellant.

[15] To support his contention, learned P.P. has placed reliance on paragraphs No.5.5, 5.5.2, 5.7.2 & 5.7.3 of the Hon'ble Apex Court's judgment passed in *Deepak Kumar Sahu v. State of Chattisgarh* reported in **2025 SCC OnLine SC 1610**, which reads as under:

“ 5.5. In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail. In *State of Punjab v Gurmit Singh* [(1996) 2 SCC 384] it was observed:

In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case. *****

5.5.2, This Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction could base solely on the evidence of the prosecutrix. It was further observed that as a general rule there is no reason to insist on the corroboration except in certain cases, it was stated. *****

5.7.2. Insignificance of minor discrepancies was pointed out by this Court in *State of Himachal Pradesh v. Lekh Raj*, [(2001) 1 SCC 247]. By referring to earlier judgment in *Ousu Varghese v. State of Kerala*, [(1974) 3 SCC 767], it was observed that minor variation in the accounts of the witnesses are often the hallmark of the truth of their testimony and the discrepancies are found to be of minor character not going to the root of the prosecution story, they need not be given undue importance.

5.7.3. It was observed in *Jagdish v. State of Madhya Pradesh*, [1981 SCC (Cri) 676], that mere congruity or consistency is not the sole test of truth of depositions. The discrepancies have to be such which could be characterized as material, which are not normal and of the nature not expected from the normal person.....”

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

[17] It is seen from record that, in her deposition as P.W.2, the minor victim girl deposed that Rupak mamu, accused herein (the victim used to address him as ‘Mamu’) inserted his finger in her private part and also touched her breast. It was also deposed by her that by using mouth saliva his finger was inserted in her private part and she was also bitten by him on her breast. She further deposed that the accused asked her not to disclose the fact to her mother.

[18] In her statement recorded under Section 164(5) of Cr.P.C. also, the victim girl stated that the accused bit her on her chest. Indicating her lower portion of her body, the victim child also stated that the accused put his finger.

[19] P.W.11, the Doctor deposed that on 17.03.23, she was posted as Medical Officer at Sabroom SDH. On that day, police brought the victim girl for medical examination in connection with Sabroom PS case No.2023SBM015 registered under sec.376(3) of IPC read with sec.6 of POCSO Act. On examination of the aforesaid victim medically, she found the following:

“1) The hymen was not ruptured and there is no injury mark or redness present over vulva or vagina.

2) There was small pin point abrasion over mons pubis measuring about 0.1 X 0.1 cm.

3) There was mark of redness above and lateral to left areola.”

[20] As per the forensic report, the final opinion was prepared by the said Doctor who examined the victim girl which on identification by the witness, was marked as Exbt.P-13/PW-11 and the same indicates as follows:

“1) There are no signs suggestive of recent vaginal penetration as

> hymen is not ruptured

>Redness present above and lateral to left areola

>no injury mark or redness present over vulva and vagina

>small pin point abrasion over mons pubis approx (0.1 X 0.1)cm.

> No evidence of application of force or restraintment.

>No semen/spermatozoa/blood of human origin could be detected in exhibit A,B, C, D as stated in the SFSL report.”

[21] In a prosecution under the POCSO Act, it is a well settled principle that minor discrepancies, trivial contradictions or insignificant omissions in the testimony of the victim child do not shake the root of the prosecution case, provided the core of the allegation remains intact. A child witness who is a four- year old girl cannot be expected to give a perfect narration and minor omissions due to fear, trauma or tender age, are natural. From the deposition of

witness P.W.2 i.e. the victim girl & her statement recorded under Section 164(5) of Cr.P.C. and the deposition of P.W.11 i.e. the medical officer and her final opinion as discussed above, this Court finds that there was sexual assault upon the victim girl by the convict since from the medical report, it is evident that redness was present above and lateral to left areola and small pin point abrasion over mons pubis approx (0.1 X 0.1)cm was also detected. This Court is of the view that due to minor procedural lapse, the entire prosecution case cannot be discarded which is supported by the medical evidences. The judgments of the Hon'ble Apex Court as referred by the learned counsel for the appellant in this regard are not applicable to the facts and circumstances of the present case.

[22] However, to test the present case, this Court feels it necessary to extract the provisions of Section 6 of the Protection of Children from Sexual Offences Act, (POCSO Act for short) and accordingly, the same 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 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.”

[23] As per the medical report, no aggravated penetrative sexual assault can be proved since hymen of the victim was not ruptured and no injury mark or redness was present over vulva & vagina and also no semen/spermatozoa/blood of human origin could be detected. This Court is of the view that in the absence of any proof of aggravated penetrative sexual assault, Section 6 of the POCSO Act cannot be applied to the fact and circumstances of the present case. However, since the sexual assault upon the

victim girl has been proved and undisputedly, the minor victim girl was only 4 years of age at the time of the alleged offence, this Court is of the considered opinion that ends of justice would be met if the provisions of Section 9(m) of the POCSO Act are applied in the present case and the convict appellant is sentenced to suffer imprisonment for 5 years for commission of offence punishable under Section 10 of the POCSO Act instead of Section 6 of the POCSO Act imposed by the learned Court below.

[24] In view of the above observations, this Court orders that the convict appellant shall undergo 5(five) years imprisonment under Section 10 of the POCSO Act. It is made clear that the punishment with regard to imprisonment would be 5 years only instead of 20 years as imposed by the learned Court below and that the period of detention already undergone by the convict shall be set off from the sentence period. Apart from the observations made above by this Court in the present judgment and order, all other aspects of the impugned judgment and order dated 26.11.2024 passed in Special (06) POCSO of 2023 by the learned Special Judge, South Tripura, Belonia shall remain unaltered.

[25] Accordingly the impugned judgment and order dated 26.11.2024 passed in Special (06) POCSO of 2023 by the learned Special Judge, South Tripura, Belonia is modified to the extent as indicated above.

[26] Thus, the present appeal filed by the appellant is partly allowed and accordingly the same is disposed of.

[27] As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[28] Send down the LCR forthwith.

S. DATTA PURKAYASTHA, J DR.T. AMARNATH GOUD, J

Sabyasachi G.

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