

TRHC010005132025

2026:THC:648-DB



HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) 30 of 2025

Sri Tapash Das @ Tanu son of Sri Tapan Das, resident of
Madhuban, Kathaltali, Indira Colony, P.S. Amtali, District-
West Tripura.

..... Appellant(s).

Versus

The State of Tripura

..... Respondent(s)

For the Appellant(s) : Mr. Samrat Ghosh, Advocate
Mr. Saugat Datta, Advocate
Ms. Uttara Singha, Advocate

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

Date of hearing and delivery
of judgment & order : 19.05.2026.

Whether fit for reporting : No.

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
J U D G M E N T & O R D E R (O R A L)

[Dr.T. Amarnath Goud, J]

[1] Heard Mr. Samrat Ghosh, 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 Cr.PC against
the Judgment and Order of conviction and sentence dated 31.01.2022, passed

by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 06 of 2019, whereby, the instant convicted appellant was sentenced to suffer a rigorous imprisonment for a term of 10(ten) years for the offence committed by him punishable U/S-377 of the Indian Penal Code and also sentenced him to suffer rigorous imprisonment for a term of 20(twenty) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default, to suffer a simple imprisonment for a further term of 02(two) months for commission of the offence punishable under Section-6 of the POCSO Act. It was also ordered that both the sentences shall run concurrently.

[3] The prosecution story in a nutshell, is that, an FIR vide No.2017/AMT/083, dated 29.08.2017 was lodged on the basis of a written complaint of the informant namely, Sri Purna Hrishidas against the accused person namely Tapash Das @ Tanu, son of Sri Tapan Das of Madhuban, Kathaltali, Indira Colony, PS- Amtali, District-West Tripura for having committed the offence punishable U/S 377 of the Indian Penal Code (in short IPC) and Section 4 of the POCSO Act. The factual backdrop that led to filing of such FIR, in brief, is that, on 28.08.2017 at about 2030 hours, one Tapash Das @ Tanu, met with the victim in-front of his house and due to hot and humid atmosphere the accused offered the victim to take bath in the water tank together in front of Mont Fort School. Due to familiarity with the accused, the victim readily agreed and accompanied him near the water tank in front of Mont Fort School. On being taken there, the FIR named accused person forcibly committed unnatural carnal intercourse against the order of nature upon the victim to fulfil his unnatural lust and after committing the said offence, he fled away from that place.

[4] Thereafter, during investigation, the Investigating Officer visited the place of occurrence as directed by the OC of the PS and as shown by the local eye witnesses and prepared hand sketch map along with separate index. Subsequently, the Investigating Officer examined the available witnesses and recorded their statements under section 161 of Cr.P.C. He also arranged for the

Speech Educator to examine the minor victim, as the victim was not in a position to say anything on that day and Sri Raju Ghosh was called as Speech Educator in the present case. Subsequently, medical examination of the victim and potency test of the accused persons were conducted. Thereafter, exhibits seized from the hospital during medical examination of the victim as well as accused persons were sent to SFSL for examination and thereupon collected SFSL examination report.

[5] The Investigating Officer arrested the alleged accused person and forwarded him before the Court below. On completion of investigation, IO filed charge sheet vide Amtali PS C/S No.04/2019, dated 24.01.2019 under Sections 377 of the IPC read with Section 4 of the POCSO Act against the accused person namely Tapash Das @ Tanu for facing trial in the open Court of law. During trial, upon hearing submissions of parties and taking into consideration the record and documents submitted therewith, learned Court below framed charge against the accused person namely, Sri Tapash Das @ Tanu under Section 377 of the IPC read with Section 6 of the POCSO Act to which he pleaded not guilty and claimed trial.

[6] The prosecution in order to bring home the charge levelled against the accused person, has examined 12 witnesses (PWs). Apart from that, several other evidences in the form of documents, as well as, material objects were also adduced by the prosecution starting from Exbt.-1 to Exbt.-9 before the learned trial Court below. On completion of prosecution evidence, the statement of accused person was recorded under Section 313 of Cr.P.C., in which, all the incriminating facts and circumstances appearing in prosecution evidence were put to him, which were denied by him in *toto*. The accused person stated that he was innocent and was falsely implicated in this case and that he had not committed the said offence. At that stage, the Defence declined to adduce any Defence Witness (DW) in his favour and therefore, the defence evidence was closed.

[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 and order of conviction and sentence dated 31.01.2022, passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 06 of 2019, in the following manner:

“.....ORDER

10. In the result, accordingly the convict namely, Sri Tapash Das @Tanu stands sentenced to suffer rigorous imprisonment for a term of 10(ten) years for the offence committed by him punishable U/S-377 of the Indian Penal Code and for commission of the offence punishable Under Sec-6 of the POCSO Act, I do hereby sentence the convict to suffer rigorous imprisonment for a term of 20(twenty) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only). In default of payment of fine, the convict shall suffer simple imprisonment for a further term of 02(two) months.

It is made clear at this stage that both the sentences awarded above, shall run concurrently.

11. The period of detention, if any undergone by the convict during Investigation, Inquiry or Trial shall be set off as per the provisions of sec 428 of Cr.PC. Such period shall be set off against the substantive sentence of the convict.”

[8] Aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 31.01.2022, passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 06 of 2019, the appellant herein has preferred the instant appeal seeking the following reliefs:

- “i) Admit the appeal.
- ii) Call for the case records of Case No. Special (POCSO) 06 of 2019 from the court of Ld. Special Judge (POCSO), West Tripura, Agartala.
- iii) Notify the Public Prosecutor.

AND

- iv) After hearing both sides Your Lordship would be kind enough to set aside/quash the impugned Judgment and Order dated 31.01.2022 passed by the Ld. Special Judge (POCSO), West Tripura, Agartala.....”

[9] Mr. Samrat Ghosh, learned counsel appearing for the appellant submits that the learned trial Court convicted the appellant merely on the basis of conjectures and surmises and hence, the impugned order of conviction and sentence is liable to be set aside/quashed. It is contended that the learned trial Court has recorded that the victim has deposed before it but, from the deposition of the P.W. 6 (Educator of the Institute Speech Rehabilitation, Abhoynagar under Government of Tripura) it is absolutely clear that the victim cannot speak or communicate at all and makes some weird signs which are hard to decipher whenever he encounters any question from someone. Therefore, it is not at all clear how the learned trial Court below has deciphered his statements so clearly and also how he was subjected to elaborate cross-examination when the victim himself is a deaf and dumb person. Moreover, from the recording of his statement it is also not clear whether any assistance from any interpreter was being taken by the learned trial Court. According to the learned counsel for the appellant, there has apparently been a glaring irregularity for which the impugned judgement and order dated 31.01.2022 is liable to be set aside/quashed. To support his contention, learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Apex Court passed in ***State of Rajasthan vs. Darshan Singh Alias Darshan Lal*** reported in (2012) 5 SCC 789.

[10] Mr. Ghosh, learned counsel for the appellant further contends that, P.W.9 being the Medical Officer who has examined the victim apparently found some marks of injury in the private part of the victim but in his cross-examination, he stated that, he had not written the history of the offence on the statement of the victim and BP of the victim has been found to be normal on that day and that there was no fresh bleeding from the alleged wounds. He further stated that, he has not mentioned in his report about the age of the injuries and he has also admitted that the alleged injuries might have been caused from other sources like a piece of bamboo. These facts, however, were not at all considered by the by the learned trial Court below. He, therefore,

urges this Court to set aside/quash the impugned order dated 31.01.2022 passed by the learned Court below.

[11] Per contra, Mr. Raju Datta, learned Public Prosecutor strongly opposes the contention raised on behalf of the convict appellant. He contended that the minor victim cannot be expected to speak and depose like an adult person. In the case in hand, the IO arranged for the Speech Educator to examine the minor victim, since the victim being a minor was not in a position to say anything on that day. During trial in the Court below, the defence side had cross-examined the victim and had never raised before the Court below the issue that the victim is deaf and dumb. He, further submits that all the evidences more particularly, the deposition of the minor victim and the medical reports, indicate that the appellant is guilty and as such, the impugned order passed by the learned Court below on 31.01.2022 should not be interfered with and the present appeal filed by the appellant is liable to be dismissed.

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

[13] It is seen from record that, P.W.8, i.e., the victim deposed that the accused namely, Tanu Das applied his penis on his anus and he also asked the victim not to tell this thing to the father and mother. P.W.8 further deposed that no other person has committed such things against him. He also stated that he cannot recognize Tanu Das and do not know his residence also. The photo of the accused was shown to the victim through a mobile camera of the staff of the Court below and the victim identified the photographs shown in the mobile. The witness could not remember the date.

[14] In cross-examination, P.W.8, the victim stated that, Tanu Das committed such act upon him in the night and it was about 10 pm on that day. P.W. 8 continued to state that the accused was in plain dress and the accused was in shirt on that day. On that day, the victim was in red coloured dress and was in shirt and half pant. P.W.8 further deposed that he was examined by

police and also examined by doctor. The witness also stated that he had never seen the photographs of the accused earlier and police came to his house and he was taken to police station. P.W.8 denied the fact that the photo shown was not of the accused. He further denied the fact that Tanu Das did not apply his penis on his anus. He also denied the fact that he is not the victim of this case. The witness continued to deny the fact that he has been tutored by his mother.

[15] P.W. 9, the doctor deposed that on 29.08.2017 at 10.30 am he examined the victim, son of Purna Rishidas, aged about 8 years, male student at Department of Forensic Medicine, TMC & Dr. BRAM Teaching Hospital, Hapania. He further deposed that on examination, one abrasion of size 1 cm x 5 cm is present over the left flank situated 4 cms above the left iliac crest and 7 cms left to the mid-line. On local examination 1(one) abrasion contusion is present around the perianal area, circular in shape measuring 5 cms x 4.8 cms, 2 (two) number of tear were present at 11 O'Clock position around the anal verge (upper margin). Both the injuries were tendered in touch, reddish brown in colour and about 12 hours in duration. No fresh bleeding or discharge is present. Now sample preserved two numbers of anal swab, one which was preserved at Causality Block and another was preserved at Department of Forensic Medicine & Toxicology, TMC & Dr. BRAM Teaching Hospital on 29.08.2017 at 3.01 am and 29.08.2017 at 10.30 am respectively. P.W. 9 opined that based on the physical findings found around the anal region was consistent with forceful sexual intercourse or penetration of penis like object through anus. As per the result of chemical analysis report, seminal stain/spermatozoa of human origin could not be detected in Exhibit-A. Final Opinion:- Based on general physical examination, local examination and chemical analysis report from SFSL, Agartala, the witness was of the opinion that there was evidences of penetration of the anal orifice / canal by penis like objects, however, sexual intercourse cannot be ruled out. The report prepared by the witness was duly signed and sealed by him which on identification was marked as Exhibit-4. On 25.08.2018 the witness along with Dr. Bodhisatwa Das (Demonstrator, Forensic Medicine & Toxicology, Tripura Medical College) examined one Tanu Das @

Tapash of 27 years of age and a male. The opinion is that "based on general physical examination and local examination, I am of the opinion there is nothing to suggest that Tanu Das @ Tapash is not capable performing sexual intercourse under ordinary circumstances". The report prepared by the witness and signed by him and also by Dr Bodhisatwa Das (Demonstrator, Forensic Medicine & Toxicology, Tripura Medical College). The witness further deposed that he could identify the signature of Dr. Bodhisatya Das being an Asstt. Professor and on identification the report along with the signature and seal are marked as Exhibit-5, as a whole.

[16] In his cross-examination by defence, P.W.9 stated that he did not write the history on the statement of the victim. The BP was found normal on that day. P.W.9 denied the fact that the BP was not normal. The witness further stated that during examination, no fresh bleeding or discharge was found. He admitted the fact that in the local examination, he had not written about the age of all the injuries, rather, it was written both the injuries but his opinion is related to the age of injuries is for all the injuries. P.W.9 further denied the fact that in the report the age of injury was not report for all the injuries. P.W.9 also stated that penis like object means it may be any object which can be similar to the penis, like a piece of bamboo. The witness did not get the wearing apparels of the victim as per the history provided to him.

[17] P.W. 11, who is also a doctor, deposed that on 30.08.2018, he was posted as Senior Scientific Officer cum Assistant Chemical Examiner in State FSL Narshingarh. On that day, their office received one sealed parcel containing 1 Exhibit in connection with Amtali PS Case No.83 of 2017 dated 29.08.2017 under Section 377 IPC and 4 of POCSO Act being forwarded by SPO Amtali, West Tripura. Being directed by the Director, he examined the said exhibit during the period from 04.09.2018 to 20.09.2018. That exhibit was Exhibit A:- Anal Swab of the victim. He further deposed that he conducted the examination in Biology/Serology division of the Laboratory through chemical test, Gel diffusion test and absorption elution test and examination; he opined

that seminal stain/spermatozoa of human origin could not be detected in the exhibit.

[18] Upon overall analysis of the material evidence on record, more particularly, the deposition of the victim as P.W.8, the deposition of the doctors i.e. P.W.s 9 & 11 alongwith the medical reports, this Court is of the view that conviction in a case under POCSO Act can be formed based on the sole testimony of the minor victim and in the present case in hand, deposition of doctors as PWs 9 & 11 and the medical reports available on record also supports the testimony of the victim. During the entire procedure of recording deposition of witnesses, the Defence side has never challenge the procedure with the plea that the victim is deaf and dumb boy. Nowhere, it has been mentioned that the victim was either deaf or dumb. As such, the judgment of the Hon'ble Apex Court placed by the learned counsel for the appellant is not applicable to the facts and circumstances of the present case. This Court has no hesitation to say that the accused appellant has committed the offence punishable under the POCSO Act.

[19] However, it is brought to the notice of this Court that the alleged incident took place on 28.08.2017 and the injury sustained by the victim was not grievous in nature. The appellant herein is stated to have been in prison for more than 4 years. Considering the period already undergone imprisonment, injuries of the victim as per medical report which are mild in nature, this Court is of the lenient view that since the alleged incident took place in the year 2017, thus, the old provisions of Section 6 of the POCSO Act i.e. before its amendment in the year 2019 be applied and ends of justice would be met, if the convict appellant suffers rigorous imprisonment for a term of 10(ten) years under Section -6 of the POCSO Act, before its amendment in the year 2019 instead of 20 years rigorous imprisonment as sentenced by the learned Court below. Hence, for the purpose of reference, the old provisions of Section-6 of the POCSO Act, before its amendment in the year 2019 needs to be recalled, and accordingly the same are quoted as under:

“6. Punishment for aggravated penetrative sexual assault.- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment 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.”

[20] In view of the above discussions, this Court orders that the appellant shall suffer rigorous imprisonment for a term of 10(ten) years under Section -6 of the POCSO Act, before its amendment in the year 2019 instead of 20 years rigorous imprisonment as ordered by the learned Court below and the period of detention already undergone, if any, shall be set off. It is made clear that apart from the observations made by this Court in the present judgment, all other aspects of the impugned judgment and order of conviction and sentence dated 31.01.2022, passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 06 of 2019 shall remain unaltered.

[21] With the above observations and directions, the impugned judgment and order of conviction and sentence dated 31.01.2022, passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 06 of 2019 is modified to the extent as indicated above. Resultantly, the present appeal is hereby partly allowed and the same stands disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[22] Send down the LCR forthwith.

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

Sabyasachi G.

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