

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 39 of 2024

Sri Manoranjan Das,
son of late Suramani Das
Resident of Krishnapur
P.S.- P.R. Bari, District- South Tripura.

.....Convict Appellant(s).

Versus

The State of Tripura

..... Respondent(s)

For the Appellant(s) : Mr. Arjun Acharjee, Advocate
Ms. S. Sarkar, Advocate
Ms. M. Basu, Advocate

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

Date of hearing and delivery
of judgment & order : 06.01.2026.

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. A. Acharjee, learned counsel appearing on behalf of the appellant. Also heard Mr. Raju Datta, learned P.P. representing the State.

[2] The present appeal is filed under Section 374 of Cr.P.C against the impugned judgment of conviction and sentence dated 06.12.2022 & 08.12.2022

passed by the learned Special Judge, South Tripura, Belonia, in case No. Special 06 (POCSO) of 2021 whereby and whereunder the appellant has been convicted U/S 376-AB of IPC and section 6 of POCSO Act and sentenced him to suffer R.I for 20 years and to pay a fine of Rs. 10,000/-, i.d. to suffer R.I for 2 months for the offence U/S 6 of POCSO Act and further R.I. for 5 years and to pay a fine of Rs.2,000/- for the offence U/S 10 of POCSO Act, i.d to suffer R.I. for 1 month. It has been ordered by the learned Court below that both the sentences of imprisonment shall run concurrently.

[3] The prosecution story in brief is that on 12.03.2021 at about 1200 hours accused Manoranjan Das called the minor daughter of the informant and taken her in his house and at that time no family members of the accused were present in his house. Thereafter, the accused forcefully took off the pant of the victim girl of the informant and attached his penis into the private part of the victim girl and also did fingering into the vagina of the victim girl. The accused also pressed the breast of the victim girl. The victim daughter of the informant shouted saying that her mother is coming, then the accused released the victim girl. After that the victim narrated the fact to the informant and while the husband of the informant returned home in the evening, the informant narrated the same to her husband. Thereafter, the husband of the informant reported the matter to the local panchayat and villagers and they advised to take the recourse of law and then the informant lodged the case with the O/C, P. R. Bari P.S. and thereafter, P R. Bari P.S. Case No. 2021/PRB/012 under Sec 376AB of IPC and

section 6 of POCSO Act was registered against the accused person and the case was endorsed to an SI of police. The case was investigated and on completion of investigation I/O filed charge sheet against accused Sri Manoranjan Das for commission of offence punishable under Sec.376AB of IPC and section 6/10 of POCSO Act.

[4] Having received the charge sheet, cognizance of offence punishable under Sec. 376AB of IPC and section 6/10 of POCSO Act was taken by the learned Court below against accused Manoranjan Das. After that, the learned Court below framed charges against accused Sri Manoranjan Das for commission of offence punishable under Sec. 376AB of IPC and section 6 and 10 of POCSO Act. The contents of the charges read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial. The prosecution examined as many as twenty witnesses to prove the charges against the accused person. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the accused person was subjected to examination as warranted U/S 313(1)(b) of Cr. P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea was of total denial and false implication for previous enmity. However, he declined to adduce any witness on his defence.

[5] Thereafter, learned Court below upon hearing the arguments advanced by the parties and on perusal of material evidence on record, has convicted the accused for commission of offence punishable under Section 376-

AB of IPC and Section 6 and 10 of POCSO Act, 2012 by its judgment and order dated 06.12.2022 and thereafter, the impugned sentence dated 08.12.2022 has been passed by the learned Court of Special Judge South Tripura, Belonia in case No. Special 06(POCSO) of 2021 in the following manner:

“.....ORDER OF SENTENCE

[3] In view of the discussion stated above, I hereby sentenced convict Sri Manoranjan Das to suffer R.I. for 20 (twenty) years and to pay a fine of Rs.10,000/- for the offence punishable under Sec 6 of POCSO Act, in default, to suffer R.I. for two months and the convict is further sentenced to suffer R.I. for five years and to pay a fine of Rs.2,000/-for the offence punishable under Sec. 10 of POCSO Act, in default, to suffer R.I. for one month. Both the sentences shall run concurrently. If the fine money is paid, the same be handed over to the victim as compensation.

[4] The period of detention undergone by the convict during enquiry and trial shall be set off from the sentence period.....”

[6] Aggrieved by the aforesaid impugned Judgment of conviction dated 06.12.2022 and sentence dated 08.12.2022 passed by the learned Special Judge, South Tripura, Belonia, in case No. Special 06 (POCSO) of 2021, the appellant herein has preferred the instant appeal seeking the following reliefs:

“i) Admit this appeal;

ii) Call for the record;

iii) Issue notice upon the respondent; and

iv) After hearing the parties be pleased enough to set aside the impugned Judgment of conviction and sentence dated 06.12 2022 & 08.12.22 passed by **** Special Judge, South Tripura, Belonia, in case No. Special 06 (POCSO) of 2021 and further please to acquit the convict appellant for fair ends of justice.”

[7] Mr. A. Acharjee, learned counsel appearing for the appellants submits that the learned trial Court below ought to have held that the alleged

presence of convict appellant at the alleged place of occurrence, alleged participation of the appellant in the commission of alleged offence are absolutely doubtful and on the basis of such evidence, the appellant could not be convicted for the alleged offence. He, further submits that the result of examination of TSFSL of the victim had been negative but the learned trial Court did not consider the same. He, also states that the findings of the learned trial Court below is arbitrary, unwarranted in law and facts and as such, not tenable in the eye of law and the same is liable to be quashed/set aside.

[8] On the contrary, Mr. R. Datta, learned P.P. appearing for the State 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 dated 06.12.2022 and sentence dated 08.12.2022 in case No. Special 06 (POCSO) of 2021 and the same should not be interfered with. He, therefore, urges this Court to dismiss the instant appeal filed by the appellant.

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

[10] In her deposition of witness as P.W.2 as well as in her statement recorded under Section 164(5) of Cr.P.C., the victim girl stated that the convict appellant attached his private organ with that of the girl and pressed her breast.

[11] P.W. 19 i.e. the Medical Officer who had examined the victim, opined before the Court below that, fresh sign of recent forceful sexual act was

there and though hymen was intact, but fresh sign of inflammation was there. She also deposed that after receiving the report from SFSL, she gave her final conclusion that seminal stain/spermatozoa of human origin could not be detected in the samples, but during her medical examination, there was probably sign of inflammation over the hymen and over other private parts of the victim, but hymen was intact.

[12] It is seen from record that the convict appellant was about 76 year old at the time of alleged offence i.e. on 12.03.2021.

[13] From the deposition of witnesses P.W.2 i.e. the victim girl and P.W.19 i.e. the medical officer, this Court finds that there was sexual assault upon the victim girl by the convict. But, as per the medical report, no aggravated penetrative sexual assault can be proved. 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, this Court is of the considered opinion that ends of justice would be met if the provisions of Section-7 of the POCSO Act are applied in the present case and the convict appellant is sentenced to suffer imprisonment for 5 years with fine of Rs.20,000/- for commission of offence punishable under Section 8 of the POCSO Act instead of Section 6 of the POCSO Act imposed by the learned Court below.

[14] In view of the above observations, this Court orders that the convict appellant shall undergo 5(five) years imprisonment under Section 8 of the POCSO Act with fine of Rs.20,000/- and in default of paying the fine money, he shall suffer further imprisonment for 6(six) months. It is made clear that the period of detention already undergone by the convict shall be set off from the sentence period.

[15] Accordingly the impugned judgment dated 06.12.2022 and the sentence dated 08.12.2022 passed by the learned Special Judge, South Tripura, Belonia, in case No. Special 06 (POCSO) of 2021 are modified to the extent as indicated above. Apart from the observations made above by this Court in the present judgment and order, all other aspects of the impugned judgment dated 06.12.2022 and sentence dated 08.12.2022 passed by the learned Special Judge, South Tripura, Belonia, in case No. Special 06 (POCSO) of 2021 shall remain unaltered.

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

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

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

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