

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.53 OF 2024**

Sri Sujit Tanti,
Son of Sri Subal Tanti,
Resident of Gopitilla, Sipaihour,
P.S.-Khowai, District- Khowai Tripura,
Convict-Appellant in Jail,
Represented by her mother,
Smt.- Saraswati Tanti,
W/o Subal Tanti, resident of Gopitilla,
P.O. and P.S.- Khowai, District-Khowai.

.....Appellant

VERSUS

The State of Tripura,
Represented by the Secretary,
Home Department, Govt. of Tripura,
Civil Secretariat, New Capital Complex,
P.S.- NCC, West Tripura.

.....Respondent

For Appellant(s) : Mr. Debesh Ch. Roy, Advocate.
Mr. Abhijit Gon Chowdhury, Advocate.

For Respondent(s) : Mr. R. Datta, P.P.
Mr. R. Saha, Addl. P.P.

Date of hearing and delivery
of judgment and order : 20.01.2026.

Whether fit for reporting : YES/NO.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

1. This present criminal appeal has been filed under Section 374 of the Criminal Procedure Code, 1973 against the judgment dated 24.08.2023 passed by Special Judge (POCSO), Khowai, Tripura in Case No.SPL (POCSO) 01 of 2019

whereby the appellant was convicted and sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs. 50,000/-for the offence committed under section 4 (2) of Protection of the children from the Sexual offences Act,2012 and also sentenced to pay fine by Rs 10,000/-for the offence under Section 506 of Indian Penal Code.

2. The fact of this case is that, one Suresh Tanti set the criminal law in motion by lodging an '*ejahar*' stating *inter-alia* that his blind daughter aged about 13 years had been raped by the accused Sujit Tanti several times. The informant is a rickshaw puller by profession. Taking the advantage of his absence the accused used to rape her under threat of dire consequence. Initially his daughter did not inform him anything but when he noticed that his daughter stopped taking food, he created pressure on her to disclose everything, then his daughter informed that the accused frightened her by touching her throat with a bill hook. Immediately the victim was taken to police station and FIR was lodged.

3. On 16.02.2019 at 15.20 hours, on receipt of the *ejahar*, a case was registered being KHW PS case No 2019KHW012, dated 16.02.2019, under Section 376(2)(L.n).(3)/506 of IPC and under Section 4 of POCSO Act, 2012.

4. The case was endorsed to WSI Kamala Rani Murasing for investigation. During investigation she visited the place of occurrence, prepared a hand sketch map of the place of occurrence with separate index, examined available witnesses and recorded their statements under Section 161 Cr.P.C. Further, she arranged for recording the statement of the victim girl under Section 164(5) of Cr.P.C, arranged for medical examination of the victim girl, arranged for medical examination of the accused, seized the school certificate of the accused and received the SFSL report. On completion of investigation, a *prima-facie* case having been appeared, the I.O., submitted a charge-sheet dated 28.09.2019, under Section 376(3)/506 of IPC and under Section 4(2) of Protection of Children from Sexual Offences Act, (POCSO AC) against the appellant herein.

5. Thereafter, charge was framed against the accused person under Section 376(3)/506 of IPC and Section 4 (2) of the POCSO Act, 2012, to which he pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution examined twenty witnesses who were cross examined and further documents were exhibited. The accused appellant was examined under section 313 Cr Pc. The accused declined to adduce evidence.

7. After hearing argument of the parties, the learned special Judge (POCSO), Khowai delivered judgment dated 24.03.2023 convicting the appellant as stated herein above.

8. Being aggrieved with the said conviction and sentence passed in the case No. Special(POCSO)1 of 2019 by the learned Special Judge, Khowai, the appellant has preferred this present appeal seeking to set aside and quash the Judgment of conviction passed in the impugned Judgment dated 24.08.2023.

9. Heard Mr. Debesh Chandra Roy, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., and Mr.R. Saha, learned Addl. P.P., appearing for the respondent.

10. Mr. D.C. Roy, learned counsel appearing for the appellant submits that there are many discrepancies in the witness of the victim girl and her statement cannot be trusted. Learned counsel further submits that the ossification test was not conducted. Further the victim-girl was not produced before P.W-5, the Medical Superintendent for conducting age determination examination of the victim. Stating thus, learned counsel urged this Court to quash the impugned Judgment and allow this appeal.

11. On the other hand, learned Addl. P.P., submits that the statement of the minor victim girl in corroborated with the medical evidence are sufficient to prove the guilt of the appellant-convict and urged this Court to dismiss this appeal.

12. Heard and perused the evidence on record.

13. Before we delved into the conclusion of the case, let us examine some important witnesses.

14. P.W.-3, Dr. John Debbarma, deposed that on 21.02.2019 he was Medical Officer attached to Khowai District Hospital and on that day there was a prayer of I.O., to the Superintendent of their hospital for conducting age

determination test of the victim girl. The Superintendent of their hospital endorsed the same to him and accordingly, he advised for X-ray of different parts of the body of the said girl. The witness further deposed that in compliance thereto, the Radiology Department prepared the report after examination of the girl on 27.02.2019 and on the same day the report was prepared which was placed before him on 02.03.2019 along with the victim girl. On that day, after examination of the victim girl and in consultation with the radiology report dated 27.02.2019, he opined that age of the victim girl was more than 14 years but less than 16 years. The witness further deposed that again on 20.08.2019, one, Sujit Tanti was produced before him for potency test and after examination, he opined in his report that there was nothing to suggest that Sujit Tanti could not perform sexual intercourse in an ordinary way.

During cross-examination by the defence, the witness deposed that in his report for examination of determination of age he had not mentioned that the victim girl was produced in their hospital on 21.02.2019 and he advised for X-ray of different parts of the body of the victim girl.

15. PW.5, Dr. Dhananjay Reang, deposed that on 21.02.2019 he was posted as Medical Superintendent attached to Khowai district Hospital and on that day one lady visited his office with a prayer for conducting age determination examination of a girl in connection with a case and there was separate prayer for conducting sonography of that girl. On receipt of those requisitions from the Police Officer he forwarded the same to the Medical Officer who was on duty in Khowai District Hospital in the emergency.

During cross-examination, he only deposed that the victim girl was not produced before him.

16. PW.6, Dr. Surpriya Debbarma, deposed that on 16.02.2019 she was posted as Medical Officer attached to Khowai District Hospital and on that day the victim girl aged about 13 years was produced in the hospital with an alleged history of rape. The victim girl and her father narrated to her that a person used to visit the victim's house for sexual intercourse when the victim was alone for 4 to 5 months. The witness further deposed that the person used to scare the victim to kill if the victim cried for help or disclosed the fact to anyone and since

the victim was a minor she obtained RTI and LTI of the victim and her father in consent paper in presence of witnesses. The witness further deposed that during the examination of the victim she collected vaginal swab, urethra vulva swab, blood, pubic hair and urine of the victim and those materials were seized by police in which she stood as a witness. The witness also deposed that after examination, on the same day she prepared the report in the prescribed format in four sheets giving her preliminary opinion that there was no sign of recent and forceful sexual intercourse or sexual assault but she preserved her final opinion till receipt of the report of Forensic Science Laboratory giving her further opinion that sexual violence cannot be ruled out. The witness also added that subsequently the SFSL report was placed before her and after perusal of the same she opined that seminal stain/ spermatozoa of human origin could be detected in the vaginal swab, pubic hair and urethra vulva swab of the victim. Finally she opined that there was no sign of recent and forceful intercourse but her hymen was ruptured which is suggestive of old vaginal penetration.

During cross-examination by the defence, the witness deposed that the victim did not disclose the name of the accused to her and the word '*old vaginal penetration*' as she mentioned in her report may be of more than one year.

17. PW.19, the victim of this case deposed before this court that she was a totally blind girl and her brother and sister-in-law Manju Tanti lived in the same house and Sujit Tanti used to come to meet her sister-in-law so the victim knew him and he was also her co-villager. The witness further deposed that before three years he had been raping her several times and he threatened her with dire consequence if she disclosed it to any person. When she stopped taking food, her father asked her the reason for not taking food and on being asked by her father she told him that Sujit Tanti raped her. Immediately her father took her to police station from where she was taken to hospital and she was examined by the doctor in the hospital and after that she was taken to court and she could recognize Sujit Tanti by voice.

During cross-examination she deposed that she had good relation with her sister-in-law and she talked with her father freely regarding her needs. Apart from this rest part of her cross-examination is that of denial.

18. On due consideration of the evidence on record, this Court finds that the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt. The testimony of PW-19, the victim, who is a minor and totally blind, is found to be consistent, reliable and inspires confidence. She has clearly stated that the accused committed sexual intercourse with her on several occasions and threatened her with dire consequences. Her evidence has not been shaken in cross-examination. The victim has identified the accused in Court by recognition of his voice, which has been duly tested. Her statement recorded under Section 164(5) Cr.P.C. corroborates her deposition before the Court.

19. The medical evidence adduced through PW-6, read with the SFSL report, establishes rupture of hymen and detection of human seminal stain/spermatozoa in the vaginal swab and other exhibits of the victim. The medical opinion supports the prosecution case of prior sexual intercourse. The age determination evidence of PW-3 shows that the victim at the relevant point of time was a child within the meaning of the POCSO Act. Minor discrepancies pointed out by the defence do not affect the core of the prosecution case.

20. Accordingly, this Court finds that the evidence on record conclusively establishes that the victim was a minor at the relevant time and that the appellant subjected her sexual assault. The nature of the offence, as proved by the testimony of the victim and the corroborating medical evidence, attracts the offence as contemplated under Section 376(2)(1) of the Indian Penal Code, which deals with commission of rape on a woman suffering from mental or physical disability. Simultaneously, the same set of facts also constitutes penetrative sexual assault upon a child punishable under Section 4 of the POCSO Act. However, since the offence was committed in February, 2019, prior to the amendment of the POCSO Act on 16.08.2019, the punishment is required to be imposed in accordance with the un-amended provisions of Section 4 of the POCSO Act and Section 376(2)(1) of the Indian Penal Code. Accordingly, while affirming the conviction, this Court holds that the sentence shall be governed by the aforesaid provisions of law.

21. Accordingly, the convict-appellant herein is sentenced to suffer rigorous imprisonment for ten years under Section 376(2)(1) IPC and rigorous imprisonment for seven years under Section 4 of the POCSO Act, 2012. Both the sentences shall run concurrently. The fine imposed and the default stipulation, as awarded by the learned Trial Court, shall remain undisturbed.

22. Accordingly, this present appeal stands dismissed and the impugned Judgment dated 24.08.2023 stands confirmed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

S. DATTA PURKAYASTHA, J

DR. T. AMARNATH GOUD, J

Suhanjit

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