

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.73 OF 2025**

Rafik Miah,
S/o:- Late Ajar Ali,
Resident of South Ramnagar, PEC Batta,
P.S.- West Agartala, District- West Tripura.

.....Appellant

VERSUS

The State of Tripura.

.....Respondents

For Appellant(s) : Mr. Ankan Tilak Paul, Advocate.

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

Date of hearing and delivery
of judgment and order : 13.03.2026.

Whether fit for reporting : YES/NO.

HON'BLE JUSTICE DR. T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

1. This present appeal has been filed against the impugned Judgment and order of conviction and sentence dated 14.09.2023 passed by the learned Special Judge, POCSO, Agartala, West Tripura in Case No. Special (POCSO) No. 28 of 2022, whereby and whereunder the convict-appellant has been convicted under Section 10 of the POCSO Act and thereby sentenced him to undergo Rigorous Imprisonment for 07 (Seven) years and ordered to pay a fine of Rs. 20,000/- (Rupees twenty thousand only), and in default of payment of the same, he shall further undergo simple imprisonment for a period of 1 (one) month for committing the offence punishable under Section 10 of the POCSO Act.

2. The brief facts of this case are that on 07.05.2022, at about 11:00 PM (night time), the informant woke up from sleep, whereupon the informant noticed that her husband Rafik Miah was not in bed. Accordingly, upon searching him, she traced him in the adjacent room and found that the accused was sitting upon the body of her elder daughter, aged about 15 years, and with ill intention tried to put off the wearing apparels of the victim by pressing her mouth. The informant raised alarm and then the accused, husband of the informant, fled away. Subsequently, on 22.05.2022, in the night hours at about 9:00 PM, the accused started to quarrel with the informant as to why the complainant informed the aforesaid incident to the other members of his family and thereafter the accused set fire to the household articles.

3. On the basis of the complaint, a case was registered at the West Agartala Women PS, vide No. WAW/014/2022, dated 23.05.2022, under Section 10 of the POCSO Act against the convict and the same was endorsed to I.O., for investigation. On completion of the investigation, the I.O. submitted charge sheet vide West Agartala Women P.S. C/S No. 17/2022 dated 31.05.2022 under Sections 354(B)/506 of IPC read with Section 12 of the POCSO Act against the accused person to stand trial before the Court.

4. On further perusal of the record and hearing both sides, the learned Court further altered the charge against the accused person under Sections 354(A)(1)(i)(ii)/354(B)/506 of IPC read with Section 10 of the POCSO Act. On hearing the matter and contents thereof, he pleaded not guilty and claimed to be tried.

5. In order to prove the case, the prosecution has examined as many as seven prosecution witnesses. After closure of the prosecution evidence, the accused was examined under Section 313 of the Cr.P.C., wherein the accused person denied all the incriminating materials and stated that the prosecution case is false and adduced 3 defence witnesses to prove his innocence.

6. After hearing of both the parties learned Court below convicted the appellant a stated here-in-above.

7. Aggrieved thereby, the convict-appellant has filed this case seeking to set aside the impugned Judgment and Order of Conviction.

8. Heard Mr. A.T. Paul, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., appearing for the State-respondent.

9. Mr. A.T. Paul, learned counsel appearing for the appellant, submits that the victim divulged the alleged incident after the commission of the alleged offence and there is a delay of 17 days in lodging the FIR. The learned Court failed to appreciate the fact that there are material contradictions in the statements of PW-1 and the victim and, as such, the same has shaken the reliability of the prosecution witnesses. There is also matrimonial dispute between the informant PW-1 and the accused-appellant, and she, i.e., PW-1, admitted that she filed multiple complaints before the Police Station in view of the matrimonial dispute. The learned Court also failed to consider that the dwelling house of the accused consists of four rooms. One room was occupied by the accused and his wife, i.e., PW-1; in another room DW-1 was residing; one room was occupied by the mother of the accused, DW-3; and in another room the victim was residing along with her other siblings. All the rooms are bamboo partitioned and are situated at an audible distance from each other. The learned Court failed to appreciate the depositions of the DWs whereby they stated that on the date of the alleged incident the victim never complained against her father, i.e., the accused, regarding the alleged offence. Even the siblings of the victim were not examined by the prosecution, which puts a dent in the prosecution case. Land dispute was also going on between the accused and PW-1. Learned counsel further submits that the victim was tutored by her mother, i.e., PW-1, to fabricate the case against the accused.

10. On the other hand, the learned P.P. urged this Court to uphold the Judgment of conviction and sentence by stating that the testimony of the victim prosecutrix is unshaken and the same is corroborated by the statement of PW-1, the informant and mother of the victim. Minor verbal discrepancies cannot overrule the veracity of the incident and the learned Trial Court has rightly passed the Order of Conviction.

11. Heard and perused the evidence on record.

12. Before delving into the conclusion of the case let us examine some important witnesses.

13. PW-1, the informant and mother of the victim, stated that the victim connected with this case is her daughter. On 23.05.2022, the witness lodged a written complaint before the OC, West Agartala Women PS against her husband Rafik Miah, the appellant herein. Her ejahar was scribed by her victim-daughter as per the version of this witness and the witness put her signature upon it. The witness deposed that on 07.05.2022, at about 11.00 PM at night, suddenly when she woke up from sleep, she found that her husband, i.e., the accused, was not in her bed. Thereupon, the witness went to the room of her victim-daughter and found that her husband was pressing the mouth of her victim-daughter while sitting on her. Accordingly, the witness raised alarm, whereupon the accused tried to kill the witness by throttling her neck. She also stated that at that point of time the neighbours came to the spot and on seeing them the accused fled away. In her deposition PW-1 further stated that again on 22.05.2022 the accused returned from Bangladesh and at about 9.00 PM at night he came to the dwelling house and tried to use criminal force upon the witness, but somehow she escaped from his clutches and hid herself at some safe place. As a consequence, the accused became annoyed and set the household articles on fire. The witness also identified the accused Rafik Miah who was present in the dock before the Court.

In her cross-examination, PW-1 denied the defence suggestions that she did not witness the accused pressing the mouth of the victim on the night of 07.05.2022 or that the accused did not attempt to throttle her and flee on arrival of neighbours. She also denied the suggestion that on 22.05.2022 the accused did not return from Bangladesh, attempt to use criminal force upon her or set household articles on fire. However, PW-1 admitted that she had a love marriage with the accused in 2006 and that the victim is their elder daughter. She also admitted that matrimonial disputes arose after about 1½ years of marriage and that she had lodged several complaints before the police. She further stated that the accused is a habitual drinker and used to assault her when she restrained him from drinking and gambling. The witness denied the defence suggestion that the present case was

lodged falsely to prevent the accused from selling his share of land and also denied the suggestions regarding the genuineness of the victim's birth certificate and seizure of wearing apparels.

14. PW-2, who is the victim in the instant case, deposed that the informant of this case is her mother. On 23.05.2022 her mother lodged a case against Rafik Miah. Further, the witness stated that on 07.05.2022, at about 11.00 PM at night, when she was sleeping in her room with her brother and sister, at that time her father, i.e., the accused, came to her room and pressed her mouth and also tried to put off her clothes. Thereupon the victim shouted and on hearing her screams her mother reached, who was sleeping in another room, and made hue and cry, whereupon the accused tried to throttle her mother, but when the neighbours arrived on hearing the hue and cry of her mother then the accused ran away. PW-2 also stated that before 07.05.2022, whenever her mother used to go out to perform her duties, the accused used to threaten her that if she did not undress herself in front of him then he would kill her brother and sister. The witness further deposed that on 22.05.2022, at about 9.00 PM, the accused returned from Bangladesh to the dwelling house and started to quarrel with her mother and subsequently burnt the bed. Being aggrieved by the aforesaid incident, the mother of the witness lodged a written complaint against the accused.

In her cross-examination, the victim denied the defence suggestions that on 07.05.2022 the accused did not enter her room at night, press her mouth or attempt to remove her clothes, and that her mother did not come to the spot on hearing her cries or that the accused did not flee on arrival of neighbours. She also denied the suggestion that the accused did not threaten her earlier when her mother went out for work. The victim admitted that her mother worked as a domestic maid and that her father, the accused, used to drive an E-rickshaw to support the family. She further stated that she used to attend school and private coaching and that she was examined by the police and her statement was recorded by the Magistrate in the presence of her mother. However, she denied the defence suggestion that the accused never made any indecent proposal to her or that she was falsely deposing as tutored by her mother. She also stated that she had no knowledge

about the contents of the seizure list though she signed the same as instructed by the police and denied that the wearing apparels marked as Exhibit MO-I series were not seized by the police.

15 DW-1, DW-2 and DW-3, who are close relatives of the accused, deposed that there had been a matrimonial dispute between the accused and his wife Ratna Begam regarding transfer of land and marriage of the victim. According to them, the victim had earlier eloped with one Meheraj and the present dispute arose thereafter. They also stated that the accused never committed any misdeed with the victim and that the dwelling house consists of four rooms with bamboo partitions, situated within audible distance of each other, and that the victim never complained to them about any such incident.

In their cross-examination, the said witnesses admitted that DW-1 is the sister of the accused, DW-2 the elder sister-in-law and DW-3 the mother of the accused. They also admitted that no complaint was ever lodged regarding the alleged disputes or the alleged elopement of the victim with Meheraj. They, however, denied the prosecution suggestion that they were deposing falsely to save the accused.

16. In her statement recorded under Section 164 of the Cr.P.C., the victim substantially reiterated the same incident as narrated in her deposition before the Court, with only minor variations in expression which do not affect the core of the prosecution case.

17. Heard the perused the record.

18. Upon careful consideration of the evidence on record, this Court finds that the testimony of the victim (PW-2) is natural and consistent and is duly corroborated by the evidence of PW-1, the informant and mother of the victim. The defence plea regarding alleged matrimonial dispute and other suggestions put to the prosecution witnesses do not appear sufficient to discredit the core version of the prosecution case. The defence witnesses are admittedly close relatives of the accused and their testimony does not inspire confidence to discard the consistent version of the victim.

19. However, from the evidence on record it appears that the act attributed to the accused primarily consists of pressing the mouth of the victim and attempting to remove her wearing apparels with sexual intent. The materials on record do not satisfactorily establish the ingredients necessary to attract the offence punishable under Section 10 of the POCSO Act. Nevertheless, the act clearly constitutes “*sexual assault*” within the meaning of Section 7 of the POCSO Act, punishable under Section 8 of the said Act.

20. Accordingly, the conviction of the appellant under Section 10 of the POCSO Act as recorded by the learned Special Judge, POCSO, West Tripura is modified and the appellant is instead convicted for the offence punishable under Section 7 read with Section 8 of the POCSO Act.

21. The other sections applied are under Section 354 of the IPC. The case against the accused also attracts the provisions under Section 354 of the IPC. Hence, viewed from any angle, the punishment prescribed under those provisions is less than 5 (five) years. On the other hand, Section 10 of the POCSO Act deals with aggravated sexual assault. However, the ingredients required to constitute the offence under Section 10 of the POCSO Act do not appear to be attracted by the allegations made by the victim girl, i.e., PW-2, in her statement recorded under Section 164 of the Cr.P.C. At the most, the allegations would attract the offence under Section 7 of the POCSO Act, but not under Section 10 of the POCSO Act.

22. So far as the question of sentence is concerned, it appears from the records that the appellant has already undergone about four years of incarceration during the pendency of the case. Considering the facts and circumstances of the case and the period of detention already undergone, the sentence of the appellant is restricted to the period already undergone.

23. Accordingly, the conviction of the appellant is modified from Section 10 of the POCSO Act to Section 7 read with Section 8 of the POCSO Act, and the sentence is reduced to the period already undergone by him.

24. The appellant be released forthwith, if not required in connection with any other case.

25. With the above observations and directions, this present appeal stands disposed of.

Send down the LCR along with a copy of this judgment to the learned Trial Court for information and necessary action.

DR. T. AMARNATH GOUD, J

Suhanjit

RAJKUMAR
SUHANJIT SINGHA

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