

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 65 of 2024

Sri Brajendra Debbarma
son of late Agunia Debbarma
Village Champlai, P.S. Mungiakami
District- Khowai, Tripura

.....**Appellant(s)**

Versus

State of Tripura

.....**Respondent(s)**

For the Appellant(s) : Mr. Partha Sarathi Roy, Legal Aid Counsel.

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

Date of hearing & delivery
of judgment & order : 27.01.2026.

Whether fit for reporting : Yes/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. Partha Sarathi Roy, learned Legal Aid Counsel for the appellant. Also heard Mr. Raju Datta, learned Public Prosecutor appearing for the State-respondent.

[2] This present appeal is filed under Section 374 of Cr. P.C against the impugned judgment of conviction and sentence dated 14.06.2024 passed by the learned Special Judge, Khowai Judicial District, Khowai in case No. Special (POCSO) 09 of 2021 whereby the appellant has been convicted under section 42 of POCSO Act and sentenced to suffer Rigorous Imprisonment for a period of 20 (twenty) years and to pay a fine of Rs.50,000/(Rupees fifty thousand) only and in default of payment of the same, to suffer simple imprisonment for a term of 05(Five) months for commission of the offence punishable U/S 376AB of the IPC and in the alternative, under Section 6 of the POCSO Act.

[3] The prosecution story in brief is that one Shri Buddhi Mohan Debbarma, the informant lodged his ejahar before the OC, Mungiakami - PS, alleging the facts that on 19.04.2021 at about 07 AM, his minor daughter aged about 06 years, went to the house of the accused in their neighbourhood, then he committed rape upon her by pressing her mouth. After the incident, the minor victim returned back to her house crying and disclosed the matter to her mother. Subsequently, the informant stated to have heard about the incident from his wife and thereafter he asked his daughter and came to know about the entire incident. It is also stated that police officer attended the informant's house being informed about the incident and thereafter the written ejahar was lodged.

[4] On the basis of the said complaint, a case was registered at Mungiakami PS, vide No.2021/MGK/011 on 19.04.2021, U/S-376(2)(f) of the IPC read with Section 04 of the POCSO Act, against the accused Brajendra Debbarma and the same was endorsed to an SI for investigation. In course of investigation, the IO visited the place of occurrence, prepared a hand-sketch-map along with separate index and examined the victim girl along with other available witnesses. It was stated that on 19.04.2021, the accused had been arrested and forwarded before Court below and during investigation, the IO arranged for medical examination of the victim, as well as the accused and

further seized various samples collected from their bodies including wearing apparels of the victim for the purpose of forensic examination. It was also stated that the IO collected all the forensic reports and medical examination reports and on completion of investigation, he found that a prima-facie Case was well established against the accused and hence, submitted charge-sheet bearing no.12/2021 dt.31.07.2021, U/S- 376(2) (f) of the IPC read with Sec-4 of the POCSO Act. Thereafter, during trial, upon consideration of the record and upon hearing submission of both sides, initially charge was framed U/S-376(3) of the IPC and U/S-4(2) of the POCSO Act against the accused, hearing the contents of the same, the accused pleaded not guilty and claimed to be tried.

[5] Subsequently, another charge U/S-376AB of the IPC and alternatively, U/S-5(m) of the POCSO Act was framed against the accused and hearing about the contents of the same, the accused pleaded not guilty and claimed to be tried. In order to prove the charges framed against the accused, the prosecution examined as many as 13 witnesses. The accused was also examined under Section 313 of Cr.P.C. wherein he denied all the incriminating materials, which appeared in the prosecution evidence against him and declined to adduce any evidence in his favour.

[6] Thereafter, upon hearing the arguments of both sides and on perusal of the material evidence on record, learned trial Court on 14.06.2024 in case No. Special (POCSO) 09 of 2021, sentenced the accused person, appellant herein in the following manner:

“.....17. Considering the facts of the Case in hand and the loss suffered by the victim, I am of the considered opinion that it is not a Case for awarding maximum punishment, i.e. death sentence to the convict.

Thus, in the instant Case, finding the proposition of Law as defined under Sec-42 of the POCSO Act, I hereby sentence the convict Brajendra Debbarma to suffer rigorous imprisonment for a term of 20 (twenty) years and also Order him to pay a fine of Rs.50,000/- (Rupees fifty thousand only) and in default of payment of the same, he shall suffer simple

imprisonment for a term of 05 (five) months for commission of the offence punishable U/S-376AB of the IPC and in the alternative, under Section-6 of the POCSO Act.

The amount of fine, if recovered from the convict shall be handed over to the victim / her parents as compensation.....”

[7] Aggrieved by the above-quoted sentence passed by the learned Court below, the appellant side has preferred this present appeal seeking the following reliefs:

“i) Admit this appeal,

ii) Call for the record,

iii) Issue notice upon the respondent; and

After hearing the parties be pleased enough to set aside the impugned Judgment of conviction and sentence dated 14-06-2024 passed by ***** Ld. Special Judge, Khowai Judicial District, Khowai in case No. special 09 of 2021 (POCSO) whereby and where under the appellant has been convicted U/S 42 of POCSO Act and sentenced to suffer Rigorous Imprisonment for a period of 20(twenty) years and to pay a fine of Rs.50,000/(Rupees fifty thousand) and in default of payment of the same, he shall suffer simple imprisonment for a term of 05 (five) months for commission of the offence punishable U/S 376 AB of the IPC and in the alternative, under Section 6 of the POCSO Act.”

[8] Mr. P.S. Roy, learned Legal Aid Counsel submits that learned trial Court has erred in law and came to a wrong conclusion. He submits that P.W. 10, the informant father of the victim, deposed that he got the information from his wife about the alleged incident and accordingly, they went to Mungiakami P.S. wherefrom they went to Teliamura Hospital. But, the mother of the victim deposed that her husband was not at home in the time of incident and on coming back home, she informed him about everything, where after they took their daughter to the hospital and then to the police station. According to the learned Legal Aid Counsel there are some contradictions between the

statements of PW 10 and P.W. 9 and also they are not the eye witnesses. He submits that learned trial Court failed to appreciate the same.

[9] He further submits that P.W.5, the Senior Officer of State Forensic Science Laboratory in his deposition stated that seminal stain/spermatozoa/blood stain of human origin or skin/tissue/hair/epithelial cells, etc could not be detected from any other seized sample which is the Exhibits-4 and 4/1, respectively, but, the learned trial Court failed to appreciate the same. It is also contended that in her cross examination PW 6 admitted that at the time of examination of the victim, there was no fresh injury relating to any sign of recent sexual intercourse and PW 14, during cross examination, stated that he did not submit the report of potency test in the prescribed format. He contends that learned Court below failed to appreciate the said facts. He, therefore, urges this Court to set aside the impugned judgment of conviction and sentence dated 14.06.2024 passed by the learned trial Court in case No. Special (POCSO) 09 of 2021 and to allow the present appeal filed by the appellant.

[10] On the contrary, Mr. Raju Datta, learned P.P. representing the State opposes the submissions made on behalf of the appellant. He contends that the observation and decision made by the learned trial Court is based upon the evidences on record. He further submits that the opinion of the learned trial Court is also based upon the medical reports in connection with the present case and the same is just and proper which needs no further interference by this Court. Stating thus, learned P.P. urges this Court to dismiss the present appeal and to uphold the impugned judgment of conviction and sentence dated 14.06.2024 passed by the learned trial Court in case No. Special (POCSO) 09 of 2021.

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

[12] It is seen from record more particularly from the Aadhar card of the victim girl that she was about 6 year old at the time of the alleged incident.

[13] In the statement of victim recorded under section 164 (5) Cr.PC, the minor victim girl stated that she went to the house of Brajendra in the morning to bring the seeds of corn. He was sleeping at that time. As she went there, he woke up, though he was not sleeping. As he saw her, he got up all on a sudden and pressed her mouth, took off her pant and committed the act with her. She also stated that after committing the act with her, she got up from there and left. After returning home, she disclosed the incident to her mother.

[14] It is seen from the deposition of witness No. PW 8, that the victim girl deposed before the Court below that one day she went to the house of Brajendra Debbarma to bring the seeds of corn. He was alone in his house. When she entered his room he pressed her mouth and took off her panty (inner) and penetrated his private part into her private part. After some time, he left her go and threatened her with dire consequence if, she informed her parents. It was also deposed by the victim girl that when she returned to her house and she felt tremendous pain in her private part then she informed it to her mother. Her mother asked as to why she did not inform her (mother) instantly and she told her mother that Brajendra threatened her with dire consequence, so out of fear she did not inform. It was further deposed that her mother took her to a doctor and the doctor gave her medicine. She contended that earlier also she was taken to court with her mother and she gave her statement.

[15] From the exhibit 5/1 (series) i.e. the medical examination report of the victim girl it is revealed that the doctor in the pre-vaginal examination opined that the hymen was torn. The doctor also opined "*There is a evidence of vaginal penetration but the final opinion can be given after getting report from State forensic lab.*" Thereafter, on receipt of the final report from the State Forensic Lab, the doctor finally opined that "*Though there was no evidence of*

any seminal stain/spermatozoa/blood stain, there was vaginal penetration and hence, recent sexual intercourse could not ruled out.”

[16] P.W. 5, the doctor posted at State SFL, Agartala deposed before the trial Court that on being endorsed by other doctor, he conducted examination on the exhibits received in sealed parcel. After examination of the exhibited samples, PW 5 recorded his opinion in his report confirming that spermatozoa of human origin were detected in the penile swab and under-garment of the accused. P.W. 6, the doctor also deposed that she examined the victim aged about 6 years and on examination, she found evidence of vaginal penetration. The P.W. 14, the doctor deposed that he was posted as M/O at Mungiakami PHC and he had conducted potency test of the accused and found him to be positive to perform sexual inter-course. In cross-examination by defence though he (P.W.14) stated that he did not submit the report of potency test in the prescribed format, this Court opines that, due to minor procedural discrepancy, the entire deposition of the said witness cannot be discarded.

[17] From the above discussions, it is revealed that the victim girl was about 6 years of age at the time of alleged incident. The deposition of the minor victim girl before the trial Court as P.W.8 and her statement made under Section 164 (5) Cr.PC, remained unshaken, and there is no serious contradiction in her both statements. It is the general principle of law that in POCSO cases, solely based upon the testimony of the minor victim, conviction can be formed. Expecting any eye witness in such case would be unrealistic and unjust. As per the medical report, the hymen of the victim girl was torn and vaginal penetration has also been proved. The doctor also examined that spermatozoa of human origin were detected in the penile swab and on the under-garment of the accused. Except denying the allegations, the accused failed to explain his case in his favour.

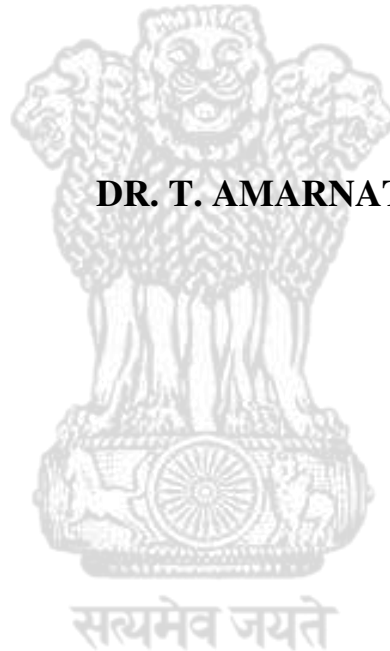
[18] With the above observations, we are of the opinion that there is no scope for taking any lenient view or extending benefit of doubts in favour of the accused-appellant. We find no infirmity in the impugned judgment of conviction and sentence dated 14.06.2024 passed by the learned Special Judge, Khowai Judicial District, Khowai in case No. Special (POCSO) 09 of 2021 and accordingly the same is affirmed.

[19] Thus, the instant appeal is hereby dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[20] Send down the LCRs.

S. DATTA PURKAYASTHA, J

DR. T. AMARNATH GOUD, J



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