HIGH COURT OF TRIPURA
AGARTALA

Crl. A No.12/2019

Haripada Saha, S/o. late Sarash Chandra Saha resident of Kunjaban Colony, P.S. New Capital Complex, District-West Tripura.

----Appellant(s)

Versus

The State of Tripura.

----Respondent(s)

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Appellant(s) : Mr. Debajit Biswas, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

Date of hearing & judgment : ***7th February, 2020.***

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal is filed by the original accused who has been convicted for offences under Section 354 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short) and sentenced to undergo rigorous imprisonment for a period of three years for each offence. The sentences would however, run concurrently.

[2] The prosecution version was that the accused was a tutor of the daughter of the first informant. On 21.06.2017 she had gone to the house of the teacher for private tuition at about 7.15 in the morning. When finding privacy with the victim the accused tried to remove her top and embarrassed her. She resisted and went to the house of the sister of the complainant situated nearby. Upon

hearing of the incident he and his wife went to the house of a sister. An FIR was promptly filed before the nearby police station a couple of hours later. A charge was framed against the accused for having committed offences punishable under Sections 354 IPC and Section 8 of the POCSO Act.

[3] PW-3, the victim girl deposed before the Court that the accused was her private tutor since two years. On the date of incident at 7.15 she had gone to the house of the accused to discuss of the selection of a subject in the higher secondary course, at that time his wife was in the kitchen and daughter was in the bathroom. The accused suddenly open her top and pressed her breasts. She called the wife of the accused and told her about the incident. She requested her not to disclose it to anybody. She rushed out the house and went to her Aunt Kalpana Acharjee's house situated near the house of the accused, where her parents were called. She narrated the incident to her parents upon which the father had lodged the complaint. In the cross-examination, she stated that the house of the accused comprised of a single hut. At the time of the incident she did not raise an alarm but called his wife. Her Aunt Kalpana's house is separated by two or three houses from that of the accused. She gone there crying. She admitted that in her statement before the Magistrate she had not stated about the accused opening the top of her dress.

[4] The first informant, father of the victim was examined as PW-1. He said that first informant, Sri Ratan Kumar Paul he deposed that on the date of the incident at about 7.30 he was at

home, when his wife told him to go to Kalpana Acharjee's house. When they went there she found the daughter crying. She told her mother that about 7.15 in the morning when she had gone to the house of the accused he had caught hold of her and also embarrassed her. His wife had requested her not to disclose this incident to anybody. He had lodged the FIR before the nearby police station. In the Cross-examination, he denied that his daughter was more than 18 years of age at the time of incident. He also agreed that the house of the accused comprised only one hut but clarified that besides the room there was one half covered kitchen.

[5] The mother of the victim, Smti Sima Paul was examined as PW-2 she also given similar version of the incident. When her daughter went to the house of the husband's sister, she informed the witness on the phone about the incident upon which she went to the said place along with her husband immediately and her husband lodged the FIR. The police had collected the birth certificate of the victim.

[6] The relative of the complainant to whose house the victim had first rushed after the incident i.e. Kalpana Paul and her husband, Shri Ranjit Kr. Acharjee were examined as PW-5 and PW-4 respectively. Kalpana Paul stated that the victim girl had come to her house crying since her house is situated close to the house of the accused and she had narrated the incident to her. She had informed this to her parents over phone. The police had come and taken away the accused. Similar version was given by her husband

PW-4 of the girl coming to their house crying and disclosing the events.

[7] The investigating officer Smti. Ramfanmawii, Sub-Inspector of Police was examined as PW-7. She gave the detailed account of the investigation carried out by her including recording the statement of the victim and other witnesses. In the cross-examination she admitted that she had not examined the person who had issued the birth certificate. She also confronted with the fact that the accused was already apprehended by the police before the FIR was lodged.

[8] This in the nut shell evidence on record. On the basis of such evidence learned counsel for the appellant submitted that there were major inconsistencies, improvements and contradictions in the deposition of the defence witnesses. The trial Court committed an error in convicting the accused. He pointed out that the prosecution had not examined any witness from the office of the register of births and deaths. In absence of the proof of the age of the victim girl being below 18 years, charge for commission of offence under Section 8 of the POCSO Act would not be established.

[9] On the other hand learned Public Prosecutor opposed the appeal contending that evidence of the victim girl was consistent. It was duly corroborated by various other witnesses. The defence has not suggested any motive of false implication of the accused. Birth certificate issued by the competent authority would

have a strong presumptive value. In absence of any evidence to the contrary the entries in such certificate must be taken to be true.

[10] Perusal of the evidence on record would show that the victim girl had narrated the unfortunate incident when she had visited the house of her tutor in the morning of 21.06.2017, finding her alone in the house the accused had misbehaved with her physically. She, therefore, first complained to the wife of the accused who requested her not to disclose this incident to anyone. She rushed out of the house crying and went to the house of the sister of her father which was separated by barely a couple of houses from that of the accused. There she narrated the incident to her Aunt and Uncle who called her parents to their house. She again narrated the incident to them upon which the father lodged the FIR.

[11] The conduct of the victim is most natural. She was barely aged about 17 years at the time of incident when an elderly person taking advantage of seclusion had tried to misbehaved with her, she rushed out to the house and immediately went to the house of her relative which was situated in the close proximity. The version of the victim girl was supported by several witnesses. For example Smti. Kalpana Paul, PW-5 to whose house the victim went first after the incident also gave a similar version. Her husband, PW-4 also supported this. Further corroboration is available from the deposition of the parents of the victim PW-1 and PW-2.

[12] There is no delay in filing the FIR, the same was lodged almost immediately after the incident. It is true that there are

minor improvements in the versions of the witnesses. In particular for example, before the Court the victim had stated that the accused tried to remove her top of the dress, something she had not previously stated in her statement to the police. That may also be minor differences in the versions of different witnesses, however, none of them is so fundamental as to shake the very foundation of the prosecution version.

[13] The defence did suggest that the house of the accused comprised of only one hut and therefore, with other two female members the wife and daughter of the accused being around, the accused could not have found privacy to commit the offence. However, the witnesses have given sufficient clarification. For example, PW-1 father of the victim stated that the house comprised of one hut and a half covered kitchen. The victim had stated that the wife of the accused was in the kitchen and the daughter was in the bathroom.

[14] Significantly, the defence had not even suggested any worthwhile motive for false implication of the accused. All that was stated by way of a suggestion in the cross examination was that the victim got poor marks in her examination and, therefore, annoyed with the tutor he was being falsely implicated in the said case. This is my opinion would be a very weak motive for false allegation of this nature to be made by a minor girl which would undoubtedly invite wide adverse publicity.

[15] The defence that the maker of the entry in the birth registrar was not examined, also cannot be accepted. Section 2(1)(d) of the POCSO Act defines child as to mean any person below the age of 18 years. The Supreme Court in case of ***Ms. Eera, through Dr. Manjula Krippendorf Vrs. State (Govt. of NCT of Delhi) and another;*** reported in ***AIR 2017 SC 3457*** held that the use of word age in the said definition would include only the physical age and not the mental age of the victim. Going by the birth certificate showing the date of birth of the victim as 06.06.2000, she was certainly below the age of 18 years on the date of incident i.e. the 21.06.2017. As correctly pointed out by the learned Public Prosecutor in case of ***State of Madhya Pradesh Vrs. Preetam;*** reported in ***AIR 2018 SC 4212*** in the context of the entries in the school leaving certificate produced by the prosecution to prove the age of the prosecutrix it was observed that:

> ***"(12) In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of head master, Bhaulal (PW-8), and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence."***

[16] I, therefore, do not find any error in the judgment of conviction recorded by the trial Court. The trial Court having awarded sentence of three years for offence under Section 8 of the

POCSO Act which is a minimum prescribed by the statute there is no scope for further reduction of sentence also.

[17] In the result, appeal is dismissed. The accused, however, would have time up to 15th March, 2020 to surrender. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI),CJ.

HIGH COURT OF TRIPURA

Dipankar