

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 100 of 2023

***Tarak Nath Ghosal*
versus
*The State of West Bengal & Anr.***

For the Appellant : Mr. Mrityunjoy Chatterjee
Mr. Debapriya Majumder
Mr. Akash Sarkar.

For the State : Ms. Rituparna De Ghosh
Ms. Srilekha Chatterjee

For the Respondent no.2 : Mr. Dipanjan Dutt.

Heard On : 17.09.2024

Judgement On : 17.09.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 28.04.2023 and 29.04.2023 passed by the learned Judge, Special (POCSO) Court, Howrah in Special T.R.No.21 of 2016 arising out of Special Court Case No.25 of 2016 wherein the learned trial court was pleased to hold the appellant guilty and convicted him under Section 10 of the POCSO Act, 2012. Thereafter, the learned trial court proceeded to sentence the appellant to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, i.d. to suffer rigorous imprisonment for five months for the offence punishable under Section 10 of the POCSO Act.

The genesis of the case relates to Jagacha Police Station Case No.07 of 2016 dated 12.01.2016 which was initiated on the basis of a written complaint being submitted by the mother of the victim girl with the Officer-in-Charge, Jagacha Police Station. The allegations in the written complaint were to the effect that the complainant's minor girl was aged about 6 years and was a student of class-I. She was sent for paid tuition for a period of two hours at the residence of Laxmi Ghosal and Tarak Ghosal. It is alleged that, in all probability on 07.01.2016, the complainant's daughter was tortured physically and considering her tender age, she felt pain at her ruptured sexual part. On 11.01.2016 at night, the complainant's daughter disclosed that she felt pain while urinating and then the complainant came to know that her sexual part was wounded. After hearing from the child, she understood that Tarak Ghosal has tortured her daughter in her sexual part by inserting his finger. The complainant, therefore, requested the police authorities to take necessary action and for punishing the offender.

On the basis of the aforesaid complaint, Jagacha Police Station was pleased to register the case under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act and the Officer-in-Charge of Jagacha Police Station was pleased to endorse the case to Sub-Inspector, Tapan Kumar Maitra for investigation. The Investigating Officer on conclusion of investigation submitted charge-sheet dated 25.03.2016 before the learned Special Court under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act and the learned trial court after compliance with all the relevant provisions of the Code was

pleaded to frame charge on 19.04.2016 against the accused/appellant under Section 6 of the POCSO Act. The contents of the charge were read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

In order to prove its case, the prosecution relied upon 10 witnesses which included P.W.1 - 'A' victim girl; P.W.2 - 'B' mother of the victim girl/de facto complainant; P.W.3, Bhabesh Biswas, scribe of the FIR as well as the neighbour of the victim; P.W.4 - 'C' grand-mother of the victim girl; P.W.5 - 'D' father of the victim girl; P.W.6 - Bimal Mukherjee, a relative and neighbour; P.W.7-Subhas Roy, neighbour; P.W.8-Pintu Chandra, neighbour; P.W.9-Dr. Rita Saha, Medical Officer, who examined the victim girl; P.W.10- Tapan Kumar Maitra, Sub-Inspector of Police and Investigating Officer of the case.

P.W.1 'A' the victim girl in her deposition stated that she went for tuition to Laxmi Ghosal in her house and in the same house an uncle named Tarak Ghosal used to stay. Laxmi Ghosal is the wife of Tarak Ghosal and one day when she went to her house at 3.00 p.m. for tuition, she was not available and Tarak Ghosal was available at that time at the house. Tarak Ghosal kissed her in lip, touched her breast, undressed her frock and pressed her breast. Tarak Ghosal also touched her vagina and inserted his finger inside her vagina, as a result, she suffered pain and started weeping. At that time, Tarak Ghosal told her not to disclose the incident to anybody and threatened her if she disclosed she would be assaulted. She narrated the incident to her mother. She identified her signatures which were admitted in evidence. She also identified the

accused in court. In cross-examination, she replied that she took tuition from Laxmi Ghosal and not from Tarak Ghosal and there were four girls and three boys who used to go Laxmi Ghosal for tuition. She also replied in cross-examination that she reported the incident to her mother and grand-mother one day after the incident when she suffered pain in her vagina during urinating. On the next day morning, she was taken to hospital and on that day, she was not taken to police. She also replied that once an altercation took place between her parents and Laxmi aunti and the same was over the issue of this incident. She denied that any altercation having taken place between her parents and Laxmi Ghosal over the issue relating to enhancement of tuition fees. She denied the suggestion advanced in cross-examination and was consistent in her version so far as the issue relating to her sexual abuse at the instance of Tarak Ghosal is concerned.

P.W.2-‘B’ is the mother of the victim girl who lodged the complaint with the Officer-in-Charge, Jagacha Police Station. She deposed that her daughter was seven years old and a student of class-I. She proceeded to narrate the facts in her deposition that she sent her daughter for private tuition to Laxmi Ghosal and used to pay Rs.200/- per month and also used to pay an additional sum of Rs.300/- per month for keeping her daughter in her absence. Tarak Ghosal, the husband of Laxmi Ghosal, used to stay in the same house. On or about 11th January, 2016 in the night when her daughter went to urinate, she heard her daughter was crying. She asked her daughter the reasons of crying, her daughter disclosed that she was suffering pain in her vagina. She thereafter

examined her vagina and noticed that the wall of vagina was reddish and blood was coming out. On further enquiry, her daughter told her that Tarak Ghosal inserted his finger inside her vagina and sucked and bit the tongue and lip of her daughter, including touching her breast. Consequently, when her husband returned, she narrated the incident to him and on the next morning, they went to Jagacha Police Station and lodged written complaint which was drafted by Bhabesh Biswas as per her instructions and thereafter she signed the same. She identified her signature in the complaint which was admitted in evidence. On the next date, her daughter was medically examined at Howrah Hospital where she gave consent. She identified her signature which was admitted in evidence. She further narrated that she was examined by police and subsequently her daughter was taken before the Magistrate and there she narrated the incident before the Magistrate. She identified the accused Tarak Ghosal and stated that Tarak Ghosal was not the tutor of her daughter. In cross-examination, she replied that she was unable to say the actual date when the incident of sexual assault was inflicted upon her daughter and it was out of guess in the complaint she stated the date on 07.01.2016. She further replied that her daughter went for tuition to Laxmi Ghosal on 11th January, 2016 and at the night of 11th January, 2016 during inspection she saw that blood was coming out from her vagina and her vaginal wall was reddish. She on specific query replied that wearing apparels were not stained with blood. In her complaint, she stated that she came to know from her daughter that Tarak Ghosal has sexually abused her in the manner in which she stated earlier. She

denied the fact of any collusion for lodging false case against the appellant and denied the suggestion that her daughter did not sustain injury on any parts of her daughter.

P.W.3 Bhabesh Biswas is a neighbour of the complainant and is also the scribe of the FIR and one of the members of Narayanpalli Unayanan Committee who deposed that he came to know from the mother of the victim girl that her daughter was subjected to physical assault by Tarak Ghosal when she went to his house for private tuition. On hearing the incident, he accompanied the complainant to Jagacha P.S. and as per instructions of the complainant, he scribed the complaint. He identified the complaint which was admitted in evidence. He also identified the accused in court as he knew him. In cross-examination, he replied that he heard the incident only from the mother of the victim.

P.W.4 'C' is the grand-mother of the victim girl who deposed that P.W.2 is her daughter and P.W.1 is her grand-daughter. She proceeded to state that at afternoon both her daughter and her husband went out from the house to attend their duties at Uluberia and they kept their daughter in the house of Laxmi Ghosal for which they paid remuneration to Laxmi Ghosal. On 11th January, 2016, she came to know from her grand-daughter P.W.2 that she was feeling pain at her vagina and the child stated to her that about four days ago Tarak Ghosal inserted his finger inside her vagina and also undressed her wearing apparels, embraced her and kissed her. On 12th January, 2016, a

complaint was lodged at Jagacha Police Station informing the incident by the parents of the victim girl and on that date, she was also examined by the police. She knows Tarak Ghosal and, as such, identified him in court. In cross-examination, she stated that in her house she stays alone and her granddaughter used to go to the house of the accused for the last one year prior to the date of the incident. She visited the police station on 12th January, 2016 as the police called her. She came to know regarding the incident from her daughter and son-in-law. She denied the incident of falsely deposing before the court regarding the facts of sexual assault.

P.W.5-‘D’ is the father of the victim girl who deposed that he had a business of trading of old garments and for the purpose of his business, he along with his wife, both go out of the house at about 2.00 p.m. During their absence, they keep their daughter/victim girl in the custody of Laxmi Ghosal who stays at the locality. Laxmi Ghosal used to charge a sum of Rs.500/- per month for keeping and teaching her daughter. On 11.01.2016 in the night his wife told him that their daughter was suffering pain in her vagina and on enquiry the child replied that on 07.01.2016 when she had been to the house of Laxmi Ghosal for tuition and Laxmi Ghosal was absent, her husband Tarak Ghosal undressed her wearing apparels, kissed her and touched her vagina and inserted his finger inside her vagina. The accused threatened her not to disclose the incident to anybody and also threatened her of beating if she disclosed the same to anybody. On 12.01.2016 he along with his wife, mother-in-law and daughter along with some villagers went to Jagacha Police Station

and his wife lodged complaint at the police station which was drafted by Bhabesh Biswas. Subsequently, his daughter was medically examined at the Howrah Hospital. He was examined by the police. He identified the accused in court. In cross-examination, he replied that as usual from 07.01.2016 till 11.01.2016 his daughter went to the house of Tarak Ghosal for staying there and for tuition. He further replied that the victim girl is the daughter of his wife from her first marriage and after her husband left, he has married P.W.2. Subsequently, another girl child was born to them and there was no lawful divorce of the marriage between the P.W. 2 and her earlier husband. In cross-examination, he specifically denied regarding the suggestion of sexual abuse having not been committed to his daughter.

P.W. 6 is Bimal Mukherjee who deposed that P.W.5 happens to be his nephew and, as such, the victim girl happens to be his grand- daughter. He proceeded to depose that on 11.01.2016 at 9.00 p.m., he found that the victim girl was weeping and he asked her why she was weeping, when after repeated persuasion, the victim girl replied that she used to go to her private tutor's house and about 2/3 days ago Tarak Ghosal who was there in the house pushed/penetrate his finger into her vagina. The parents of the victim were raising hue and cry and he advised not to create any disturbance or take the law in their own hands. He also advised them to go to local police station for redress. He identified the accused in court. He was interrogated by the police authorities. In cross-examination, he replied that it was a fact that he stated to the police on 11.01.2016 at 9.00 p.m., he met the victim girl when she was

weeping and enquired the reasons from her and on repeated persuasion she narrated regarding the incident.

P.W.7 is Subhas Roy, a member of Narayanpally Unnayan Committee, who deposed in the same manner as P.W.6 regarding the issue of sexual assault having been inflicted by the accused which was narrated to him by the victim girl.

P.W.8 is Pintu Chandra, a neighbour who deposed that on 12.01.2016 in the morning, he came to learn from P.W.2 and P.W.5 that the accused Tarak Ghosal sexually abused their child. He identified the accused Tarak Ghosal in court. In cross-examination, he denied that the parents did not narrate to him in respect of the sexual abuse of the victim girl.

P.W.9 is Dr. Rita Saha, Medical Officer and Gynecologist attached to Howrah District Hospital who deposed that on 13.01.2016 she examined the victim girl 'A' who was aged about 6 years and daughter of 'D' who was identified by a lady constable in connection with Jagacha Police Station Case No.07 of 2016 dated 12.01.2016. On examination, she did not find any external injury, foreign body on her private part but found her vulval synaechae (mostly fungal infection). She further deposed that one part of vulval synaechae was found to be torn. There was no fresh bleeding or abrasion and she prepared the report which was signed by her and, as such, was admitted in evidence. She further deposed that the victim child was molested at Narayanpally but she did not name anybody. Further, in the report, it has been

stated that the date of incident is 09.01.2016 at Narayanpally in the home of Tarak Ghosal. In cross-examination, she deposed that her opinion was not conclusive but from the report and examination, according to her, molestation could have taken place.

P.W.10 is Sub-Inspector of Police Tapan Kumar Maitra, the Investigating Officer of the case. He deposed that he was endorsed the case being Jagacha Police Station Case No.07 of 2016 by the then Inspector-in-Charge and immediately after taking up the investigation, he visited the place of occurrence, drew rough sketch map along with its index in separate two sheets, examined the available witnesses under Section 161 of the Code of Criminal Procedure, produced the minor victim girl before the hospital for medical examination, collected the medical examination report of the victim girl, arrested the accused and produced him before the court as per procedure of law. He also made arrangements for recording the statement of the victim girl under Section 164 of the Code of Criminal Procedure and subsequently collected the statement from the court. Thereafter, he submitted charge-sheet against the sole accused under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act. In cross-examination, he replied that he did not send the wearing apparels of the victim girl to FSL, did not examine Laxmi Ghosal. Further, he admitted that he perused the medical examination report of the victim girl and being satisfied that the ingredients of Section 6 of the POCSO Act were made out, submitted the charge-sheet.

Mr. Chatterjee, learned advocate appearing for the appellant drew the attention of the Court to the discrepancies available in the evidence and emphasized that, although the incident took place on 07.01.2016, the complaint was lodged with the police station on 12.01.2016 after a lapse of five days and no reasonable explanation has been offered. Learned advocate further pointed out to the statement of the victim girl and submitted that the victim girl in her deposition stated that she was taken to hospital on the next date i.e. on 13.01.2016 while she referred to the incident having taken place on 09.01.2016 before the doctor and in the FIR it was stated that the incident happened on 07.01.2016. It was also pointed out on behalf of the appellant that even the mother of the victim i.e. the de facto complainant being P.W.2 was not convinced regarding the date of the incident which was disclosed by her daughter to her. The other witnesses being P.W.3 and P.W.4 do not narrate regarding the specific date of the incident particularly relating to alleged sexual abuse having taken place. So far as the neighbours are concerned, according to the appellant, their version is not acceptable as there was no scope for the victim girl to narrate such incident before them and some of them admitted that there was no direct knowledge about the incident having taken place. If the medical evidence of the doctor P.W.9 is to be believed then, according to the appellant, the same is not conclusive. Lastly, learned advocate submitted that having considered the series of inconsistencies appearing in the prosecution evidence, the foundational facts of the case are lacking for convicting the

appellant and, as such, interference is called for from this Court for setting aside the judgment and order of conviction and sentence.

On the other hand, learned advocate appearing for the State, Ms. Rituparna De Ghosh opposed the contentions so advanced and submitted that the version of the child is consistent which is corroborated by the parents as also by medical evidence, as such, there is no scope for interference in respect of the judgment and order of conviction so passed by the learned trial court and so, the same should be affirmed.

Learned advocate appearing for the de facto complainant submitted that the version of the victim before the court, her statement under Section 164 of the Code of Criminal Procedure is corroborated by the medical evidence and on the face of it the same is transparent that there was sexual abuse and molestation. Even the medical evidence do suggest that there was physical injury at her private parts. Learned advocate further submitted to the court that having considered the tender age of the child, the arguments relating to variation of one day or two days in respect of the incident are minor inconsistencies which do not override the cumulative effect of her narration of facts, which read along with the medical evidence leaves no scope to differ with the judgment and order of conviction so passed by the learned trial court.

I have taken into account the version of the prosecution witnesses and the trend of cross-examination of the accused which included amongst others denial in respect of the incident relating to the facts of sexual abuse/assault

which was inflicted upon the victim girl and non-payment of tuition fees. There is no specific issue which has been taken up by the accused when his examination under Section 313 Cr.P.C. was done by the learned special court. Although in this case charges were framed under Section 6 of the POCSO Act but the learned trial court convicted the appellant under Section 10 of the POCSO Act. If the core issue is taken into account what weighs with a court of law is that the age of the child is 6/7 years. If an assessment with regard to the heinous allegations of inserting finger in the vagina of the victim child along with the same being corroborated by the medical evidence is taken into account wherein the doctor in her evidence stated that vulvul synaechae was found torn, with no fresh bleeding or abrasion, such accusations against the appellant Tarak Ghosal is sufficient for implicating him. The incident came to the knowledge of her mother only when she felt pain after few days and disclosed the incident of Tarak Ghosal having inserted his finger in her vagina. Thus, the victim's narration of fact is corroborated by the medical evidence and, as such, the provision of Section 29 of the POCSO Act under such circumstances gets attracted. Consequently, in order to rebut such evidence, it was incumbent upon the accused to come up with such discrepancies either in prosecution evidence or adducing evidence of his own which would be in accordance with sub-Section (2) of Section 30 of POCSO Act.

As previously indicated the appellant in this case has only raised the plea concerning denial of facts and a dispute which related to tuition fees. According to this Court the same do not create any circumstance that would

rebut and/or confirm to the standard as is required under sub-Section (2) of Section 30 of the POCSO Act for the purpose of refuting the version of victim girl.

Consequently, the order of conviction and sentence so passed by the learned trial court do not call for any interference as the prosecution has been able to prove its case beyond reasonable doubt.

Thus, the judgment and order of conviction and sentence dated 28.04.2023 and 29.04.2023 passed by the learned Judge, Special (POCSO) Court, Howrah in Special T.R.No.21 of 2016 corresponding to Special Court Case No.25 of 2016 arising out of Jagacha Police Station Case No.7 of 2016 dated 12.01.2016 is hereby affirmed.

Consequently, CRA (SB) 100 of 2023 is dismissed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the trial court records immediately and inform the trial court regarding the outcome of the appeal.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

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