

**HIGH COURT OF TRIPURA  
AGARTALA**

Crl. Rev. Pet. No.15/2016

Sri Sushanta Das.

..... *Petitioner(s)*.

Vs.

The State of Tripura

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

---

For Petitioner(s) : Mr. Raju Datta, Advocate.

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

---

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

**\_O\_R\_D\_E\_R\_**

29.11.2019

This revision petition is filed by the original accused who was convicted by the learned Magistrate for offences punishable under Sections 342, 354 and 506 of the Indian Penal Code and sentenced for different periods to run concurrently. His appeal against conviction was dismissed by the Sessions Court. The sentence was, however, modified. In the revision petition the accused argues that this is a case of no evidence and, therefore, the conviction be set aside.

Briefly stated, the prosecution version was that the complainant lived with his wife and minor daughter aged about five years (*hereinafter to be referred as 'victim girl'*) resided at a house next to the house of the accused. On 24.8.2010 at about 2 O'clock in the afternoon the accused called the victim girl to her house. After locking the front door of the house he had shown the

girl obscene photographs from the mobile. He then removed the cloths of the girl and tried to fondle her genital upon which the daughter started crying. He threatened her before releasing her.

The evidence of all witnesses except the victim girl is in the nature of hearsay evidence. PW.1 father of the victim, the complainant, on the date of incident was not at home. He was away for work and was called by his wife. He, therefore, obviously did not have any direct information about the incident. PW.2 the mother of the girl was at home and was in close proximity of the site. She deposed that at about 2 O'clock she found that her daughter was not in the house. She started searching for her. After some time, she appeared, upon being asked she revealed that the accused had misbehaved with her and removed her clothes and shown indecent pictures and also threatened her. The prosecution also examined some of the neighbours. The evidence of all these witnesses would completely depend on the evidence of the victim girl herself.

The victim girl was examined as PW.7. She deposed that on the date of incident in the afternoon she had gone to the house of the accused. When she went, the accused was watching television. He locked the room and did not let her to return to her house. He undressed her and also himself. He rubbed his hand against her vagina. It was only when her mother started calling her that the accused let her go but before that he threatened her with dire consequences if she revealed the incident to anyone.

It may be recalled that the victim girl was aged about five years when the accident took place. Her ability to grasp the consequences of the incident and the alleged acts of the accused would, therefore, be rather limited. Remaining witnesses have merely stated what was being told to them by the victim girl, they had no independent information. There was no other corroboration.

The evidence of a child witness, that too as young as five years of age, necessarily has to be appreciated with due care and caution. Quite apart from the limited ability to understand the situation and state the correct details before the Court a few years later, the child witnesses would also be open to tutoring.

One fundamental difference in the version of the victim girl and that given by the other witnesses about the alleged incident is of the accused having shown indecent pictures to the girl on his mobile phone. The mother of the girl who had the opportunity to speak to the girl soon after the incident emphatically stated that the victim was shown indecent pictures by the accused on his mobile phone. The victim girl has nowhere so stated in her deposition before the Court. Though the mobile phone was seized by the investigating officer during the course of investigation, nothing has been brought on record to show that such phone carried any indecent pictures even in the memory card. Whether such pictures were shown to the girl or not is a different matter. Had such pictures been found in the mobile

carried by the accused, there would have been some corroboration with the prosecution version.

The entire prosecution evidence is thus sketchy and highly unreliable. There would be miscarriage of justice if conviction based on such evidence is confirmed. In exercise of revisional powers, therefore, conviction and sentence of the accused are set aside. Bail bonds are discharged.

Judgments of the Courts below are reversed.

With these observations, revision petition stands disposed of.

**( AKIL KURESHI ), CJ**

