

THE HIGH COURT OF TRIPURA
AGARTALA

CRL A (J) 49 OF 2019

Sri Ranjit Suklabaidya,
S/o Lt. Rakesh Suklabaidya of
Village Srirampur, PS-Kanchanpur,
District –North Tripura.

..... Appellant

– Vs –

The State of Tripura,

.....Respondent

BEFORE
HON'BLE MR. JUSTICE ARINDAM LODH

For the appellant : Ms. S. Chakraborty, Advocate

For the respondent : Mr. S. Debnath,
Addl. Public Prosecutor.

**Date of hearing and
date of delivery of
Judgment & Order** : **29.09.2020**

Whether fit for reporting : **NO**

Judgment & Order (Oral)

Heard Ms. S. Chakraborty, learned counsel appearing for
the appellant. Also heard Mr. S. Debnath, learned Addl. Public
Prosecutor appearing for the State-respondent.

2. The convict-appellant has preferred the instant appeal being aggrieved by the judgment and order of conviction and sentence, declared by the learned Special Judge (POCSO), North Tripura, Dharmanagar in Case No. Special (POCSO) 01 of 2018. By the impugned judgment and order of conviction and sentence, dated 06.07.2019, the convict-appellant was sentenced to suffer rigorous imprisonment for 1 (one) year for committing offence under Section 354A (1)(i) of IPC and to pay a fine of Rs.10,000/- with default stipulation and further to suffer rigorous imprisonment for a period of 3 (three) years for committing offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and to pay a fine of Rs.10,000/- with default stipulation. Both the sentences were directed to run concurrently.

3. The brief facts of the case are that the victim girl (name withheld) on 13.11.2017 at about 09:30 pm was returning to her home alone after attending a religious ceremony at Kanchanpur market. While returning, the convict-appellant approached her and wanted to know her acquaintance. The victim girl divulged her father's name and the convict-appellant then requested her to board his bicycle so that he could drop her into her house. Having believed, the victim girl

accompanied the appellant and boarded his bicycle. But the convict-appellant had taken her to a secluded place and after being disrobed himself he proposed the victim girl to touch his private parts. The victim girl somehow managed to flee away from the clutches of the convict. She was running towards the market. At that time, one Auto-rickshaw with passengers was coming across the road. One person, namely, Nabadwip Nama (PW-4) had noticed the girl and asked the Auto-rickshaw driver, namely, Sri Subhas Nath (PW-8) to stop the vehicle. They all got down from the vehicle and asked the girl what happened to her. The victim girl was found to be well-known to them being their co-villager. The wife of Nabadwip Nama namely Smt. Bina Nath Nama (PW-5) knew the mobile number of her aunt namely Smt. Dipa Malakar (PW-11) and she informed her accordingly. At that moment itself the victim girl divulged the entire incident to them. In the meanwhile, many residents of the adjoining locality arrived at the spot. Thereafter, narrating the aforesaid facts, a complaint was lodged.

4. On receipt of the complaint, the Officer-in-Charge of Kanchanpur P.S. registered an FIR and endorsed the case to the investigating officer for investigation.

In course of investigation, the investigating officer examined and recorded the statements of available witnesses under Section 161 of CrPC, arranged for recording statement of the victim girl under Section 164(5) of CrPC by the concerned Magistrate which, accordingly was made, arranged for medical examination of both the victim girl and the convict-appellant. The convict-appellant was medically examined and was found to be fit to do sexual intercourse. However, the guardian of the victim girl did not allow the doctor to medically examine the victim girl. Finally, after being prima facie satisfied with the offence alleged to have been committed by the convict-appellant, the investigating officer submitted charge-sheet before the learned Special Judge (POCSO), North Tripura, Dharmanagar.

5. The learned Special Judge (POCSO), North Tripura, Dharmanagar had framed charges against the accused-appellant under Section 7 read with Section 8 of the POCSO Act and Section 354 of IPC.

6. In course of trial, the prosecution examined as many as 16 witnesses and relevant documents as introduced were brought on record on proof.

7. After conclusion of recording of evidence, the accused was examined under Section 313 of CrPC when he was noticed about the incriminating evidence and materials as surfaced from the prosecution witnesses to which the accused had denied all the allegations levelled against him and pleaded his innocence, but denied to adduce evidence on his behalf.

8. After hearing the rival submissions of the parties at the time of argument and having considered the evidence and materials on record, the learned Special Judge (POCSO) has convicted the accused and sentenced him under Section 354(1)(i) of IPC and Section 8 of the POCSO Act to suffer imprisonment for the period as aforesated.

9. Being aggrieved by the impugned judgment and order of conviction and sentence, the convict-appellant has preferred the instant appeal.

10. Ms. S. Chakraborty, learned counsel appearing for the appellant has submitted that the learned Special Judge has failed to appreciate the evidence and materials on record and he committed serious error in arriving at his finding that the accused had committed offence under Section 354A(1)(i) of IPC as well as Section 8 of the

POCSO Act. Ms. Chakraborty, learned counsel has submitted that the entire story of prosecution is false for the reason that the place of occurrence was a crowded place. It was a road where many persons used to come across and there were many houses in and around the place of occurrence. As such, the story as projected by the victim girl was concocted and fabricated one.

11. On the other hand, Mr. S. Debnath, learned Addl. P.P. has submitted that the case is well proved and the learned Special Judge has not committed any error in convicting and sentencing the accused-appellant. Mr. Debnath, has drawn my attention to the evidence of victim girl (PW-2), PW-3, PW-4, PW-5, PW-6, PW-8 and PW-11.

12. I have perused the evidence and materials on record and also considered the submissions of learned counsel appearing for the parties.

13. PW-2 is the victim girl. She deposed whatever is narrated in the preceding paragraph. I have also perused her statements recorded under Section 164(5) of CrPC. I find that she did not deviate from her earlier statement in her evidence during the course of trial.

What strikes the mind of this Court that PW-2, the victim girl immediately after the incident had named the accused to PW-4, Nabadwip Nama who first met with the victim girl after he got down from the Auto-rickshaw. She specifically deposed that Nabadwip Nama asked her what happened, and accordingly, she divulged that Ranjit Suklabaidya met her and approached to go with him with his bicycle. When she boarded his bicycle, he took her to a jungle and there opening his wearing apparels asked her to touch his private parts. She further stated that being afraid of such behaviour of the accused Ranjit Suklabaidya, she started to run away. She further stated that while she was interacting with PW-4, Nabadwip Nama, at that time, Gourpada Nath (PW-3) and Arun Nath (PW-4) also arrived at the spot. She narrated the incident to them also and at that moment they had seen Ranjit Suklabaidya, the accused person was coming with his bicycle, but seeing them, the accused person left his bicycle and fled away. Thereafter, the villagers escorted her to her house.

14. I have carefully scrutinized the evidence of PW-4, Nabadwip Nama. The said witness wholly corroborated the statements and deposition of the victim girl. He further deposed that the victim girl was known to them and his wife knew the mobile number of her

mother and his wife telephoned her, and within 2/3 minutes her mother arrived and immediately thereafter Gourpada Nath and Arun Nath also came out at the place of occurrence where the victim girl narrated the incident as stated earlier.

15. PW-3, Gourpada Nath and PW-6, Arun Kr. Nath also deposed in the same tune of PW-4. There is no material discrepancy in their cross-examination.

16. PW-1, the mother of the victim girl deposed that –“*at present she is aged about 11+ years.*” This statement of PW-1 regarding the age of the victim girl was not contradicted when she was confronted with cross-examination. So, the age of the victim girl has been proved that she was aged about 11+ at the time of occurrence of the incident.

17. Another vital witness in the instant case is PW-8, the Auto-rickshaw driver Subhash Nath. He deposed that while he was proceeding towards Ahlyapur motor stand by driving his auto-rickshaw and after a while nearby the house of Arun Nath and Sunil Deb he found one teenage girl coming forward towards market side and she was continuously weeping, and then, as per request of one

passenger of his auto he stopped the vehicle and then passengers asked the girl why she was weeping but that girl could not reply anything and in the meantime, one person along with his bicycle appeared at the spot and immediately after the girl started telling that the person along with his bicycle had taken her saying her to drop into her house but after reaching in the middle way that person took her towards the jungle. In that meanwhile, that person with bicycle had fled away from the spot. He further deposed that having seen the situation two passengers of his auto got down to help the girl. The witness further deposed that the person with the bicycle was Ranjit Suklabaidya who was known to him.

Nothing material contradiction was found in his cross-examination.

18. I have also perused the statements of the accused person which he made in his examination under Section 313 CrPC. The accused person has only stated that the statements of the witnesses were false.

19. I have carefully scrutinized the evidence and materials on record. The testimony of the victim girl cannot in any way be said to

be concocted and fabricated. The claim of the victim girl that she was sexually assaulted by the accused person, the appellant herein, has been established beyond reasonable doubt. The evidence of all the witnesses, particularly, the evidence of PW-4, PW-3, PW-8, PW-7, PW-6 appear to be corroborative to the evidence of the victim girl (PW-2). The mother has specifically stated in her evidence that the victim girl was aged about 11+ years at the time of incident and she was minor. There is no material discrepancy. As such, in my opinion, the complaint lodged by the grand-father of the victim girl has been proved beyond reasonable doubt and I do not find any error in convicting and sentencing the accused-appellant as urged by Ms. S. Chakraborty, learned counsel appearing for the convict-appellant.

20. Accordingly, the judgment and order of conviction and sentence, dated 06.07.2020, as returned by the learned Special Judge (POCSO), North Tripura, Dharmanagar in Case No. Special (POCSO) 01 of 2018 is hereby upheld and affirmed.

21. The convict-appellant is on bail. Therefore, he has to surrender before the learned Special Judge (POCSO), North Tripura, Dharmanagar within a period of three weeks from the date of receipt of certified/authenticated copy of the order of this Court. If the

convict-appellant does not surrender within the stipulated period of three weeks, the learned Special Judge (POCSO), North Tripura, Dharmanagar shall proceed in accordance with law to ensure compliance of the judgment and order of conviction and sentence as imposed by him.

21. The appeal, accordingly, stands dismissed.
22. Send down the L.C. records along with a copy of this judgment immediately.



JUDGE

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