HIGH COURT OF TRIPURA
AGARTALA
CRL.A.No.07 of 2023

Samar Debnath,
Son of Late Abinash Chandra Debnath,
Of Jagatpur, P.O. Abhoynagar,
P.S. East Agartala, District: West Tripura,
PIN:799 005

---- Appellant(s)

Versus

The State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Adv. Mr. E.L. Darlong, Adv. Mr. S. Bal, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	15.02.2024
Date of delivery of Judgment and Order	:	**29.02.2024**
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of this appeal, the appellant has challenged the judgment and order of conviction and sentence imposed upon him on 23.05.2023 by Learned Special Judge (POCSO), West Tripura, Agartala in connection with Case No.Special (POCSO) 27 of 2019. By the said judgment Learned Court below convicted the appellant to suffer simple imprisonment for three years and to pay a fine of Rs.20,000/- for the offence punishable under Section 8 of the POCSO Act in default to suffer simple imprisonment for further one month.

02. Now before entering into the merit of the appeal, let us see the case of the prosecution before the Learned Trial court below. The prosecution was set into motion on the basis of an FIR laid by one Ratan Paul being the father of the victim to OC East Agartala Women PS alleging inter alia that his daughter used to go to the residence of the accused Samar Debnath for the purpose of tuition of Computer at Abhoynagar. In the month of April, 2019 said Samar Debnath outraged the modesty of his daughter by touching her breast and due to fear, his daughter did not say anything to him and hence, he laid the FIR. On receipt of FIR, OC East Agartala, Women PS registered the case under Section 354(A)(1)(i)(iv) of IPC and Section 8 of POCSO Act and the case was endorsed to SI Munna Majumder for investigation. The I.O. took up investigation of the case and after completion of investigation being prima facie satisfied laid chargesheet against the present appellant accused under Section 354A (1)(i)(iv) of IPC and Section-8 of the POCSO Act and accordingly, cognizance of offence was taken by the Learned Special Judge on 16.07.2019. Before the Learned Special Judge formal charge under Section 354A of IPC and Section 8 of POCSO Act was framed against the appellant and thereafter to substantiate the charge prosecution in total adduced seven numbers of witnesses and the prosecution also relied upon some documents which were marked as exhibits in the case. The defence theory was of total denial. However, the appellant

in course of his examination desired to adduce witness in support of his defence. Accordingly, two witnesses were adduced by the appellant who were examined as DWs-1 and 2. Thereafter on hearing of arguments Learned Special Judge convicted the appellant for which this present appeal is preferred. However, to decide the case Learned Special Judge framed the following points for decision of the case:

> **(i) Whether during the alleged period of time the victim was 'child' within the meaning of the POCSO Act?**
> **(ii) Whether on the alleged date, time and place the accused person namely Samar Debnath sexually harassed the victim (name withheld)?**
> **(iii) Whether on the alleged date, time and place the accused person namely Samar Debnath sexually assaulted the victim (name withheld)?**

03. Now for the sake of convenience let us revisit the evidence on record of the prosecution. PW-1, Mitra Das, J.M. First Class who was examined through VC deposed on oath that on 19.06.2019 she was posted as JM 1st Class, Court No.5, Agartala, West Tripura. On that day the victim aged about 13 years was produced before her in connection with East Agartala Women PS Case No.2019/WEA/030 and accordingly she recorded her statement under Section 164(5) of Cr.P.C. The victim also put her signature on the body of the statement. The witness identified the statement and the signature as recorded by the Magistrate which is marked as Exbt.1 and Exbt.1/1. During cross-examination she stated that she was not acquainted with the victim prior to 19.06.2019. She further stated that in the third sentence from the end of the statement the victim stated that she had nothing to say and surname 'Deb' in the last sentence

of the statement is smaller than the other letters of the statements. Nothing more came out relevant.

04. PW-2, Ratan Paul is the informant and the father of the victim. He deposed on oath that about three years back he laid written ejahar to OC, East Agartala Women PS against the appellant who is a private tutor of his daughter. According to him, one month prior to lodging the ejahar one day when his daughter went to attend her Computer class in the dwelling house of her private tutor, i.e. the appellant being located at Abhoynagar, Jagatpur, that time the said private tutor outraged her modesty by touching her various parts of the body including her breast and also showed her pornographic videos in his mobile phone. The said fact was disclosed by his daughter to his wife and subsequently, his wife disclosed the said fact to him and after knowing this fact they decided to take legal recourse of law. Accordingly, he laid the ejahar. His ejahar was scribed by his daughter and on being satisfied with the contents of the ejahar, he put his signature and identified his signature marked Exbt.2/1. He further stated that after lodging of the written ejahar OC, Mina Debbarma filled up the printed FIR form and identified his signature marked Exbt.3/1. He further stated that during investigation the IO of the case seized one original birth certificate of the victim daughter by preparing a seizure list and took his signature as a seizure witness. The witness identified his signature on the seizure

list marked Exbt.4/1 and the birth certificate marked Exbt.5 and identified the appellant.

During cross-examination, he stated that he has two children, one son and one daughter and his son used to take tuition from the accused person for last two years, prior to the lodging of the FIR and his daughter took tuition from the accused for the last three years prior to lodging of the FIR. He further stated either his wife or the witness himself used to accompany them to the tuition classes and they never gone to attend the said tuition classes alone by themselves. He further stated that in his ejahar and also to the police he did not say that the accused had shown pornographic videos to his daughter through his mobile phone. Further he stated that he did not say in his ejahar as to the police that accused touched different parts of the body of his daughter.

05. PW-3 is the victim of this case deposed that about three years back on a day in the evening at about 8/8.30 p.m. she went to take extra class of computer tuition at the dwelling house of his Teacher, namely, Samar Debnath, i.e. the appellant. That time the appellant showed her some obscene videos and thereafter, touched her breasts. She was terrified by such acts and for about one month her computer tuition was closed and due to fear she did not disclose the fact to his family members. Thereafter, one day she disclosed the aforesaid incident to her mother and then her mother disclosed the fact to his father and

after that his father lodged the case. She further stated that the ejahar was scribed by her and identified the same marked Exbt.2. She also stated that during investigation she was produced before Magistrate wherein she gave her statement and the witness identified her signature on the body of the statement recorded by Magistrate marked Exbt.1/2.

During cross-examination she stated that in her computer class there were three other students including her and the name of one student is Shibojyoti and after some time, some other students also joined the said class such as Bhairab Das, Arkaprava Barman, Somraj Dipta, Anubhav Debnath and others. She further stated that she joined the computer class when she was in Class-VI and continued the same for about three years and her parents used to accompany her to the said computer class. She was confronted with the statement that she stated to police that the accused showed her obscene videos when she went to take her computer class. But the same was not found in her statement recorded by I.O. under Section 161 of the Cr.P.C. She was further confronted with the statement that she stated to the Magistrate that she was terrified by the act of accused and her computer class was closed for about one month and on being drawn attention of the witness by the defence of her statement, it was found that no such statement was recorded in her statement by Magistrate under Section 164(5) of Cr.P.C. She further stated that her

elder brother was also a student of said accused person for a period of 2/3 years.

06. PW-4, Chandana Paul is the mother of the victim. She deposed that about three years back one day lodged a written ejahar before East Agartala, Women PS against the convict-appellant who is a private tutor of her daughter. According to this witness, one month prior to the lodging of the FIR, her daughter went to attend her extra computer class at the dwelling house of her private tutor namely Samar Debnath, being located at Abhoynagar, Jagatpur. After that, there was one month vacation and after the end of the vacation, her daughter refused to go to her tuition class and when she enquired about it that time the victim disclosed that the said private tutor outraged her modesty by touching her breasts and also showed her lip-kissed videos in his mobile phone. She informed the matter to her husband, whereupon her husband lodged the instant case and during investigation the police seized the original birth certificate of his daughter by preparing a seizure list and obtained her signature upon it as a seizure witness. The witness identified her signature on the seizure list marked Exbt.4/2 and identified the accused.

During cross-examination she stated that her daughter was a student of Holycross School situated at Durjoynagar, Agartala. She further stated that she did not say to the I.O. that there was one month vacation in the said computer class of his daughter. Further she stated that

her husband used to accompany her daughter to her computer class and on exceptional circumstances she accompanied her. Nothing more came out.

07. PW-4, Sanjib Paul deposed that he knows the informant Ratan Paul who lodged the case against the accused. He is the maternal uncle of the victim. His sister, i.e the mother of the victim informed him that on the date prior to the lodging of the FIR she informed him to come to her residence and accordingly, he went there when his sister told him that about two months back the accused being the private tutor of the victim girl finding her alone, touched her breast and outraged her modesty and also accused showed her obscene images/photos to the victim girl in his mobile phone. Then he advised his sister to take recourse of law.

During cross-examination he stated that he came to know the alleged occurrence from his sister not from the victim and he could not say when he gave statement to the I.O.

08. PW-6, Sahadeb Paul deposed that the informant Ratan Paul lodged the case about 3/4 years back. The accused was the private tutor of the victim. The mother of the victim told him that prior to lodging of the case the accused touched the breast of the victim girl. Then he advised the mother of the victim girl to take recourse of law. During cross-examination he deposed that he did not have any talk with the police in connection with this case.

09. PW-7, Munna Majumder is the IO who deposed that on 18.06.2019 she was posted as SI of Police of East Agartala Women PS. That day, SI Mina Debbarma of East Agartala Women PS received one written complaint from the informant Ratan Paul and accordingly registered East Agartala Women PS Case No.2019/WEA/030 under Section 354(A)(1)(i)(iv) of the IPC and Section 8 of the POCSO Act and the case was endorsed to her for investigation. She identified the signature of SI Mina Debbarma on printed FIR form marked Exbt.3/2 and identified the printed FIR form marked Exbt.3. In course of investigation she examined the victim, recorded her statement, arranged for medical examination of the victim from GBP Hospital and she visited the PO and prepared hand sketch map with separate index. She identified the hand sketch map marked Exbt.6 and her signature marked Exbt.6/1. She identified the separate index of the hand sketch map marked Exbt.7 and her signature marked Exbt.7/1. She also seized the original birth certificate of the victim by preparing a seizure list and identified the same marked Exbt.4 and her signature marked Exbt.4/3 and also confirmed Exbt.5, i.e. the birth certificate. She caused arrest of accused, arranged for recording statement of the victim girl and after completion of investigation, she laid chargesheet against the convict-appellant.

During cross-examination she stated that the victim did not state to her that due to fear she did not

report the matter to her mother, but again volunteered that the said fact was stated to her by the mother of the victim. She further stated that during investigation it was not revealed to her that there were other students taking the tuition along with the victim girl. Again volunteered that the victim used to take tuition classes alone from the accused person where the alleged occurrence took place.

10. These are the sum and substance of the evidence on record of the prosecution in respect of determination of the aforesaid points. The convict appellant in course of his examination under Section 313 of Cr.P.C. denied the allegation of the prosecution and took the plea that due to his busy schedule he used to take classes along with other students of the victim girl and further took the plea that he used to take computer class in a batch where 18/19 students used to take classes along with the victim. The name of the students were Bhargav, Bhairab Das, Shibojyoti, Arkaprabha Barman, Anubhav Debnath and the brother of the girl used to take tuition in a different batch. One day he rebuked the girl in the tuition class due to her poor performance in the examination in her private class and he asked her to bring her marksheet on the next day so that it can be shown to her guardian. Thereafter she stopped coming to the tuition classes and thereafter one day police came to his house and the convict-appellant in course of his examination under Section 313 of Cr.P.C. also desired to adduce witness in support of his defence.

Accordingly, two witnesses were adduced by the accused-appellant.

11. DW-1, Arkaprava Barman deposed that he know the accused Samar Debnath and the accused was his Computer Teacher since he was reading in class VI and in their batch 19/20 students used to study including the victim. The accused Samar Debnath used to teach them only in batch and never any private class was taken by him regarding any student. He further stated that when they used to perform badly in the exam then their Computer Teacher used to scold them. During the year 2019 in the middle part of the month of April their Computer Teacher Samar Debnath scolded the victim in their class before everybody for her low/bad performance in the exam and she was asked by the accused to bring her report card on the next date so that the accused person could have a talk with her parents and after that the victim girl stopped attending the tuition class of the accused. During cross-examination by the prosecution nothing came out relevant save and except denial.

12. DW-2, Bhairab Das also deposed that he know the accused Samar Debnath as his Computer Teacher when he was reading in Class VI. He further stated that in their batch in the computer class in total 19 to 20 students used to study including the victim girl and the accused used to teach them in a batch and never took any private class regarding any students. He further stated that when they

used to perform badly in their exam then their Computer Teacher Samar Debnath used to scold them. In the year 2019 in the middle part of April their Teacher Samar Debnath scolded the victim girl in their class before everybody and she was asked by the accused to bring her report card on the next date so that regarding lower performance of the victim girl the accused could have a talk with her parents. After that, the victim girl stopped attending the tuition class of the accused. During cross-examination save and except denial nothing came out relevant from the side of the prosecution.

These are the evidence on record of the appellant before the Learned Trial Court in support of his defence.

13. Heard Mr. S. Kar Bhowmik, Learned senior counsel assisted by Mr. E.L. Darlong and Mr. S. Bal, Learned counsel representing the appellant and also heard Mr. S. Ghosh, Learned Addl. P.P. representing the prosecution/state respondent. At the time of hearing of argument Learned senior counsel for the appellant first of all drawn the attention of the court that the relevant column of the FIR in respect of occurrence of offence and also regarding information received at PS and submitted that in the FIR no specific date and time was mentioned by the informant and the case was registered on 18.06.2019 after a long period of time. But there was no satisfactory explanation regarding delay in lodging the FIR. Although in relevant column No.8 it was simply mentioned that ‘due to

fear', but in this regard also no explanation was given in the FIR and even during trial before the Learned Court below prosecution has failed to prove the exact date and time and also the grounds regarding lodging the FIR after a long period of time for which the prosecution case has become doubtful. Learned senior counsel has further submitted that in this case except the victim there is no independent witnesses were produced to support the case of the victim. Although the victim in course of her examination tried to highlight some incriminating evidence against the appellant but her evidence was also not free from embellishment because in the case at hand the appellant has adduced two defence witnesses and those two witnesses are/were the classmates of the victim and they were present at the time of alleged occurrence but they did not support the case of the victim. Furthermore, from the evidence on record according to Learned Senior counsel, it appeared that the victim used to go to her Teacher's house accompanying by her parents but surprisingly the victim never divulged the said fact of alleged occurrence of offence either to her father or mother, soon after the alleged occurrence, rather after a long delay this case was manufactured against the appellant. Furthermore, according to Learned senior counsel as the appellant rebuked the victim for bad performance in the examination and she was asked to bring her report card regarding her poor performance, but all on a sudden she stopped going to the residence of the appellant and

thereafter manufactured the case. Learned senior counsel appearing for the appellant further submitted that there were lot of improvements in the case because from the evidence on record of the prosecution witnesses, it appears that the parents of the victim and others during their examination for the first time narrated some incident which they earlier did not disclose the same to the I.O. of the case. More interestingly, the evidence of the witnesses of the accused could not be unshaken by the prosecution in the case save and except denial. There was no evidence on record, the appellant took any extra class to the victim. So Learned senior counsel for the appellant further submitted that the appellant in course of his examination under Section 313 of Cr.P.C. gave a clear explanation to the answers of the questions put to him and finally submitted that the evidence of the prosecution were suffers from various infirmities which the prosecution has failed to explain, but the Learned court below did not consider those points and ultimately gave an erroneous finding against the present convict appellant for which the interference of the court is required and urged for setting aside the judgment.

14. On the other hand, Learned Addl. P.P. Mr. S. Ghosh appearing for the state in course of hearing of argument submitted that the prosecution has been able to prove the charge levelled against the convict appellant and referring the evidence of parents of the victim as well as the victim herself. Learned Addl. P.P. drawn the attention of the

court that the accused by the trend of cross-examination of those witnesses could not raise any doubt to disbelieve their evidence and furthermore here in the case presumption would go against the convict appellant. So finally Learned Addl. P.P. urged for dismissal of the appeal upholding the judgment of sentence and conviction by the Learned Trial court.

15. To substantiate the charges Learned counsels of both the parties during argument have referred some citations. Learned Senior counsel appearing for the appellant at the time of hearing of argument relied upon one citation of our High Court in connection with **Crl.A(J) No.19 of 2022** in **Haripada Bhim vs. State of Tripura** dated 18.01.2023 and referred para Nos.12, 18, 19, 20 and 21 of the said citation and which reads as under:

> **[12] In view of above depositions, let us discuss the other relevant witnesses for a clear view. PW-2, Smti. Jharna Debnath, the mother of the victim in her examination in chief stated on 26.08.2019 her daughter told her that on the previous day at about 7.00am when she went to attend her private tuition in the house of the accused and when she was on the stairs, the appellant grabbed her from behind and touched various parts of her body. Surprisingly she stated in her chief that she wrote the complaint as per version of her husband and thereafter he put his signature. As per prosecution case the victim first disclosed the alleged incident to her mother i.e. PW-2 had the first hand information, but in the present case the FIR has been drafted as per dictation of the father, who allegedly heard the incident from the mother of the victim.**
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> **[18] PW-4, Akarshi Majumder, the classmate of the victim and they only independent witness of this case in her examination-in-chief did not utter anything incriminating against the appellant and during her crossexamination she stated the appellant used to teach in a batch consisting of 35/40 students. She stated that she was also a student of morning batch starting from 7 to 9am. She further stated that on 25.08.2019 along with her friends namely Miss Prantika Roy and the victim went together to their tuition class taking the staircase and thereafter they came out together at about 9.00am. Further, it has been stated that on the alleged day when she went to the classroom, she found her teacher was already present there. She further stated that on the date**

> **of alleged incident the victim took tuition together and was happy. In her cross further confirmed that when her victim friend was accompanying her on 25.08.2019 no incident occurred as per her belief.**
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> **[19] This vital portion of evidence was totally missed by the learned Court below that firstly the alleged incident happened in the staircase and the victim was accompanied by her two other friends during climbing upto the tuition room, as such the prosecution case is false to its core. This vital aspect of the case was grossly overlooked by the Court below while passing the impugned judgment and order of conviction thus, making the same liable to be set aside.**
>
> **[20] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the accused appellant."**

Referring the said citation Mr. Kar Bhowmik, Learned senior counsel submitted that the fact of the present case is almost similar to the subject matter of that case decided by the Hon'ble High Court earlier and also submitted before the court to take note of the said citation in deciding the present case.

16. Mr. S. Kar, Bhowmik, Learned senior counsel further relied upon another citation of Kolkata High Court in Case No.C.R.A. No.167 of 2017 dated 15.01.2020 in **Jakir Hosain Mondal vs. State of West Bengal** and relied upon para-3, 11, 18, 20 and 21 of the said citation which observed as under:

> **"3. The brief facts leading to this appeal is that on 20.06.2016, the victim girl; is daughter of the complainant who told her mother that the appellant/accused had touched the private part of the victim girl. On 23.06.2016 at about 3 p.m. when the victim girl returned gome, she disclosed to her mother**

that the appellant had once again touched her private part when she had gone to take private tuition.

11. Admittedly, PW1 had not revealed the fact to any school teacher or to the wife of the accused/appellant or to her school-mate and after 10 days from the date of the incident, she told the fact to her mother and never informed about any pain or suffering as deposed in her examination-in-chief. There was no cut injury in her private part. Her testimony in unequivocal term reveals that it was her mother who tutored her to make such statement before the Judicial Magistrate. Accordingly, being tutored she has stated to the Magistrate that Jakir master, the appellant herein, had ejaculated in her vagina. But such is not the real fact as there is no corroboration by medical report. Rima Sarkar, PPW2, mother of the victim girl has deposed , on the contrary, after getting tuition on the alleged date of incident, her daughter returned home and she was crying and subsequently stated to her that Jakir master, the appellant herein, had ejaculated in her vagina. So, according to PW2, on the next date, she sent her daughter for getting private tuition and the same incident occurred, then she saw vagina of her daughter and found redness and nail abrasion in and around. But such facts as deposed by PW2 does not find corroboration by the medical evidence too. Dr. Apurba Kundu, PW8, who examined the victim girl but found no mark of injury on her private part or any part of her body. PW8 found no rupture of hymen or presence of any foreign body in her private part.

12. Therefore, the prosecution case appears to be a concocted and false care being foisted against the accused/appellant as I find no justification for PW2 to have sent her daughter on the next day to Jakir master to take tuition instead of reporting the matter instantly to police station and visiting to a doctor for medical examination to ascertain redness and cut mark on her daughter's vagina when PW2 found her daughter crying and complained of pain in her private part due to ejaculation by Jakir Master.

18. Now, turning to the observation and finding of the trial Judge in the impugned judgment convicting the appellant under Section 10 of the POCSO Act, this Court finds that the appellant faced trial for charge under Section 6 of the said Act. The Court held the appellant guilty of the offence under Section 10 of the POCSO Act. No doubt the POCSO Act was enacted to effectively address the sexual abuse and sexual exploitation of children below 18 years of age which provides different forms of sexual abuse including the penetrative and non-penetrative assault as well as sexual harassment and show of pornography and defines aggravated penetrative sexual assault and also provides for mandatory reporting of sexual offences which cast a legal duty of every person having knowledge that a child has been sexually abused to report the offence, but that does not mean that the provision of the Act has to be attracted to falsely implicate any innocent person out of personal dispute or political rivalry."

Referring the said judgment Learned Senior counsel drawn the attention of the court that the Learned Trial Court failed to appreciate the evidence on record of the

prosecution as well as the defence at the time of delivery of judgment and came to an erroneous finding without any basis and on the basis of some omnibus statements found the convict appellant to be guilty and convicted him accordingly and urged before the court to set aside the judgment by setting the convict appellant free from the charges.

17. Per contra, Learned Addl. P.P. S. Ghosh at the time of hearing of argument in support of his contention also referred few citations. In **Alagupandi alias Alagupandian vs. State of Tamil Nadu** reported in **(2012) 10 SCC 451** in para Nos.24 and 25 Hon'ble the Apex Court observed as under:

> **"24. Furthermore, it is contended that the statement of PW-1 cannot be relied upon by the Court also for the ground that he is an interested witness. This argument is equally without merit. The presence of PW1 at the house of his sister is natural. He was working as a cleaner and was staying with his sister in the same village. He was sleeping outside the house of the deceased and went towards the house upon hearing her screams. Every witness, who is related to the deceased cannot be said to be an interested witness who will depose falsely to implicate the accused. In the present case, the accused is also related to PW1 and there could be no reason for PW1 to falsely implicate the accused.**
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> **25. We have already discussed that the statement of PW1 is worthy of credence. In the case of Mano Dutt & Anr. v. State of U.P. [Crl. Appeal No. 77 of 2007 decided on 29th February, 2012], a Bench of this Court held that it is not the quantity but the quality of the evidence which would bring success to the case of the prosecution or give benefit of doubt to the accused. Statement of every related witness cannot, as a matter of rule, be rejected by the Courts.**
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> **36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The Court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or**

> **practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the Court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. (Ref. Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC 341] and Panchhi v. State of U.P. [(1998) 7 SCC 177].”**

Relying upon the same Learned Addl. P.P. submitted that in the Indian context the court should laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. Here in the case at hand from the evidence on record it is clear that the prosecution has been able to prove the charge levelled against the appellant. So according to Learned Addl. P.P. Learned court below rightly hold the convict appellant to be guilty for the charges and convicted him accordingly.

18. In **State of H.P. vs. Gian Chand** reported in **(2001) 6 SCC 71** Hon’ble the Apex court in para No.14 observed as under:

> **“14. So far as non-examination of other witnesses and an adverse inference drawn by the High Court therefrom is concerned, here again we find ourselves not persuaded to subscribe to the view taken by the High Court. The prosecutrix, PW7 has stated that soon before the incident she was playing with three girl-children of the same age as of hers and they were present when the accused committed rape on her. One of the girls picked up a broom and had tried to scare away the accused by striking the broom on him. This little friend of the victim had also raised a hue and cry but none from the neighbourhood came to the spot. These girls were none else than daughters of her uncle. What the High Court has failed to see is that these girls were of tender age and could hardly be expected to describe the act of forcible sexual intercourse committed by the accused on PW7. Secondly, these girls would obviously be under the influence of their parents. We have already noted the co-sister of PW1 turning hostile and not supporting the prosecution version. How could these little girls be expected to be away from the influence of their parents and depose freely and truthfully in the Court? Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the Court levelled**

against the prosecution should be examined in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution. The Court has first to assess the trustworthiness of the evidence adduced and available on record. If the Court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined. However, if the available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court, then the question of drawing an adverse inference against the prosecution for non-examination of such witnesses may arise. It is now well-settled that conviction for an offence of rape can be based on the sole testimony of prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on.

If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

___ is the law declared in State of Punjab Vs. Gurmit Singh & Ors. (1996) 2 SCC 384. [Also see State of Rajasthan Vs. N.K. -(2000) 5 SCC 30, State of Himach Pradesh Vs. Lekh Raj & Anr. - (2000) 1 SCC 247, Madan Gopal Kakkad Vs. Naval Dubey and Anr. - (1992) 3 SCC 204]. In the present case we are clearly of the opinion that in view of the accused being a relation of the in-laws of the mother of the prosecutrix and the other young girls who are alleged to have been not examined being from the family of such in-laws, it is futile to expect that such girls would have been allowed by their parents to be examined as witnesses, and if allowed, could have freely deposed in the Court. The question of drawing an adverse inference against the prosecution for such non-examination does not arise."

Relying upon the same Learned Addl. P.P. submitted that since the evidence of the victim inspires confidence and the appellant by the trend of cross-examination could not raise any doubt to disbelieve her evidence, so the evidence of the victim should be relied upon and the appeal be dismissed.

19. In **Rai Sandeep alias Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**, Hon'ble the Apex court in para No.15 observed as under:

> **"15. Keeping the above basic features of the offence alleged against the appellants in mind, when we make reference to the evidence of the so called 'sterling witness' of the prosecution, namely, the prosecutrix, according to her version in the chief examination when the persons who knocked at the door, were enquired they claimed that they were from the crime branch which was not mentioned in the FIR. She further deposed that they made a statement that they had come there to commit theft and that they snatched the chain which she was wearing and also the watch from Jitender (PW-11). While in the complaint, the accused alleged to have stealthily taken the gold chain and wrist watch which were lying near the T.V. It was further alleged that the appellant in Criminal Appeal No.2486 of 2009 was having a knife in his hand which statement was not found in the complaint. After referring to the alleged forcible intercourse by both the appellants she stated that she cleaned herself with the red colour socks which was taken into possession under Exhibit PW-4/B in the hospital, whereas, Exhibit PW- 4/B states that the recovery was at the place of occurrence. The police stated to have apprehended the appellants at the instance of Jitender (PW-11)."**

Referring the same Learned Addl. P.P. submitted that here in the given case the victim was a sterling witness of the prosecution and her evidence was free from embellishment. So according to Learned Addl. P.P. there was no scope to disbelieve her evidence.

20. In **State of Maharashtra vs. Chandraprakash Kewalchand Jain** reported in **(1990) 1 SCC 550**, Hon'ble the Supreme Court observed in para No.16 as under:

> **"16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the**

> **Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:**
>
> > **"It is only in the rarest of rare cases if the Court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."**
>
> **With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation."**

Relying upon the said judgment Learned Addl. P.P. submitted that there is nothing in the Evidence Act that the evidence of the victim cannot be accepted unless it is corroborated in material particulars and the victim herself is a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence.

21. In **Mano Dutt and Another vs. State of Uttar Pradesh** reported in **(2012) 4 SCC 79** Hon'ble the Apex court in para Nos. 24 and 25 held as under:

> **"24. Another contention raised on behalf of the accused/appellants is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or a person known to the affected party.**
>
> **25. There can be cases where it would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eye witness available to give the complete version of the incident. In this regard, we may refer to the judgments of this Court, in the case of Namdeo v. State of Maharashtra, [(2007) 14 SCC 150]. This Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law."**

Relying upon the same Learned Addl. P.P. submitted that although independent witness could not be examined by the prosecution. But in view of the subject matter of the dispute there was no scope to disbelieve the evidence on record of the prosecution including the evidence of the victim which was trustworthy.

22. In **Vijay alias Chinee vs. State of Madhya Pradesh** reported in **(2010) 8 SCC 191**, Hon'ble the Apex court in para Nos.10 and 11 observed as under:

> **"10. In State of U.P. Vs. Pappu @Yunus & Anr. AIR 2005 SC 1248, this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl**

habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under:-

> **"It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."**

11. In State of Punjab Vs. Gurmit Singh & Ors. AIR 1996 SC 1393, this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under:-

> **8....The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect**

> **on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.**
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> ** ** ** **
>
> **21.The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.**
>
> **[emphasis in original]"**

Relying upon the same Mr. Ghosh, Learned Addl. P.P. submitted that in a case of this nature it is the duty of the court to consider the cases with utmost sensitivity and minor contradictions or insignificant discrepancies in the statement of the victim should not be a ground for discard the prosecution case.

23. In **Joubansen Tripura vs. State of Tripura** reported in **(2021) 2 TLR 367** our High Court in para No.12 observed as under:

> **"12. Upon meticulous reading of Sections 29 and 30 of the POCSO Act, according to us, prosecution will commence the trial with an additional advantage that there will be presumption of guilt against the accused person, but, in our considered view, such presumption cannot form the basis of conviction, if that be so, it would offend Article 20(3) and 21 of the Constitution of India.**

> **Perhaps, it is not the object of the legislature to incorporate Sections 29 and 30 under the POCSO Act."**

Relying upon the same Learned Addl. P.P. submitted that here in the case at hand there is every scope to draw adverse inference under Section 29 and 30 of the POCSO Act against the convict appellant and the Learned Court below in delivering the judgment relied upon those provisions of law and also submitted for taking note of the aforesaid citation in deciding the case.

24. In **Kazi Rafikul Islam vs. State of Tripura** reported in **(2022) 1 TLR 879**, in para-31 our High Court observed as under:

> **"31.It is settled proposition of law that the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole."**

Relying upon the same Learned Addl. P.P. submitted that the court is not supposed to give undue importance to minor contradictions, omissions and discrepancies which do not go the heart of the matter and shake the basic version of the prosecution case. Finally Learned Addl. P.P. submitted before the court that since the prosecution has been able to prove the charge before the Learned court below beyond reasonable doubt and Learned court below after considering the evidence on record found the appellant to be guilty which do not warrant any

interference and urged for upholding the judgment of the Learned Trial Court.

25. I have heard detailed arguments of Learned counsel of the parties at length and also gone through the record of the Learned court below very carefully and the principles of law laid down by the Hon'ble Apex court and High court in the aforenoted cases. In the given case there is no dispute on record regarding identity of the alleged appellant as the accused of the case. The appellant also did not dispute anything regarding the age of the victim in course of hearing of arguments and from the record it appears that before the Learned Trial court, prosecution proved the birth certificate of the victim which was duly proved by the witnesses of the prosecution. Now we are to see how far the prosecution has been able to prove the charge levelled against the convict appellant. As already stated, Learned court below framed charge against the appellant under Section 354A of the IPC and also under Section 8 of POCSO Act and accordingly witnesses were adduced by the prosecution.

26. I have discussed the evidence on record of the prosecution as well as the defence in detail earlier. From the evidence on record specifically from the evidence of the informant, his wife and the victim i.e. PWs 2, 3 and 4 it appears to me that according to them the alleged incident took place in the month of April, 2019 and the case was registered in the month of June i.e. on 18.06.2019, after a

long gap. Although prosecution tried to establish that due to fear there was delay in lodging the FIR. But surprisingly, none of the witnesses of the prosecution i.e. PWs 2, 3 and 4 could say about the exact date of alleged occurrence of offence. Prosecution before the Learned Trial court and also at the time of hearing of argument before this court could not give any explanation in this regard. From the evidence on record it appears that there was only one allegation against the convict appellant to outrage modesty of the victim by the convict appellant by pressing her breasts and also with allegation that the appellant showed obscene pictures to the victim and according to the prosecution save and except the victim no other witnesses could witness the occurrence of offence on the alleged date. Now if we go through the evidence of PW-2, i.e. the informant and the FIR it appears that he heard the fact of incident from his wife. But when he turned up to the witness box for the first time he made a different statement that the convict appellant outraged the modesty of the victim by touching her various parts of the body including her breasts and showed her pornographic videos in his mobile phone. This fact was never stated by the informant in his FIR nor to the I.O. in course of recording his statement under Section 161 of Cr.P.C and prosecution could not give any explanation in this regard. So it appears that, that portion of evidence of the informant made first time by him before the court, so no reliance could be placed upon it.

27. Now if we go through the evidence of PW-4, i.e. the wife of the informant it also appears that she also deposed in the same manner like her husband i.e. PW-2. She is not the eye witness of the occurrence of offence. She deposed just after hearing the fact of alleged incident from her daughter. It is also on record that when the victim used to go to the residence of the convict appellant that time either PW-2 or PW-4 used to accompany her. From the evidence on record it appears that the alleged incident took place only one day. As already stated neither the victim nor her parents could say the exact date when the actual incident took place which creates a doubt about the genuineness of the prosecution story.

28. Now if we go through the evidence of PW-3 i.e. the victim it appears that she could not say the exact date of alleged occurrence of offence. But she took the plea that she went to take extra class of computer at the dwelling house of convict appellant where the accused showed her some obscene videos and touched her breasts. But during cross-examination this victim girl she specifically stated that in her computer class there were three students including her, namely one Shibojyoti and after some time Bhairab Das, Arkaprava Barman, Somraj Dipta, Anubhav Debnath and others attended the class. Had there be any sort of incident definitely the victim could divulge the fact to those students and there is also no evidence on record that in absence of those students the convict appellant committed

the offence on that day. Furthermore, according to the prosecution, the victim witness used to accompany her parents when she used to attend the classes of Teacher. Soon after the incident the victim definitely could divulge the fact to her parents at least to her mother, but surprisingly after a period of one and half month she all on a sudden narrated the said incident to her mother who in turn reported the fact to her father i.e. PW-2. This genesis of the prosecution story appears to be very confusing and appears to be manufactured and not at all trustworthy. There is no evidence on record that the victim individually attended classes and there is no evidence on record that the convict appellant committed the offence in absence of other students rather there is evidence on record on that day apart from the victim some other students were there, then how the convict appellant committed the offence in presence of other students on that day. There is also no evidence on the record from the side of the prosecution that prior to the arrival of students the convict appellant committed the offence. No explanation in this regard from the side of the prosecution before the Trial court nor to this court at the time of argument. Other witnesses of the prosecution such as PWs 5 and 6, they are the heresay witnesses and they could not say anything about the prosecution story rather they after hearing the alleged fact from PW-4 deposed before the court. So virtually there is no scope to place any reliance upon their evidence.

29. Now if we go through the evidence of DWs 1 and 2, i.e. the students of the convict appellant who are also the classmates of the alleged victim very specifically stated that on the alleged date their teacher i.e. the appellant rebuked/scolded her for her poor performance and she was asked to bring her report card/marksheet but she did not turn up for a long period. The prosecution by the trend of cross-examination of DWs 1 and 2 could not in any manner raise any doubt to disbelieve their evidence. Learned Trial court below took the plea that those witnesses being tutored by their teacher deposed against the prosecution case. But there is no evidence on record that those witnesses were tutored or being feared by the teacher they supported his case going against the prosecution case. Further from the evidence on record specifically the evidence of PWs 2 and 4 it is crystal clear that they heard the fact of incident from their daughter. So here this case is based only upon the evidence of PW-2. i.e. the victim. When the victim herself is admitting that on that relevant day apart from her some other students were there and those witnesses i.e. DWs 1 and 2 are the classmates of the said victim girl, so it is surprising as to how the Learned court below decided to disbelieve their evidence rather it is on record that the victim was attending the classes of the alleged accused since last 2/3 years. There is no other evidence on record that apart from the alleged day of occurrence of offence the convict appellant also tried to

commit such type of offence in earlier dates also. There was a long delay which the prosecution could not explain properly before the court rather from the evidence on record i.e. the evidence of PWs 2 and 3 it appears that the victim herself and her father made such statements for the first time before the court nor those facts were divulged either by the victim or her father at the time of lodging of FIR nor to the I.O. during investigation. Even to the Magistrate who recorded her statement under Section 164(5) of Cr.P.C. during investigation and this fast time statement before the court does not make any credence in the eye of law. There was no explanation in this regard from the side of the prosecution. The citations as referred although are relevant but the principle of the aforesaid citations are in my considered view cannot be applied in this case.

30. From the statements of object and reasons of the POCSO Act it appears that since the sexual offences against the children were not adequately addressed by the existing laws, and the large number of offences were neither specifically provided for nor were they adequately penalized the POCSO Act was enacted by the Parliament to protect the children from the offence of sexual harassment and pornography and to provide for establishment of special courts for trial of some offences and for the matters connected therewith or incidental thereto. Herein the given case although the Learned Trial court below framed the

charge under Section 354A of the IPC and Section 8 of the POCSO Act, but to substantiate the charge prosecution in my considered view could not place any cogent materials before the Trial court to sustain conviction against the convict appellant. Then one question may arise about the allegation of the victim against her teacher. In this regard it is submitted that since the victim was attending the classes of convict appellant since last 2/3 years and there was no evidence on record that the present convict appellant also tried to harass the victim in earlier occasions also. There is also no evidence on record that the accused committed the offence finding the victim alone in a room or there is no evidence on record that in absence of the other students the convict appellant committed the offence on the alleged day rather there is evidence on record that on the alleged day apart from the victim some other students were there and furthermore the parents of the victim used to accompany her to the residence of her private tutor. So had there be any such of offence, in that case in my considered view the victim definitely could divulge the fact at least any of the students or to her mother soon after the incident on the alleged day. There was long delay in lodging the FIR to which the prosecution could not explain properly. Even none of the witnesses of the prosecution that is the victim or her parents could say about the exact date and time of the alleged occurrence of offence. It may so happen that due to scolding the victim by the convict-appellant for her poor

performance of the exam she became annoyed and since he (the appellant) rebuked her in presence of other students so she ultimately tried to manufacture a new story because it is on record that after a long period after the alleged occurrence she did not attend her private class because of vacation and later on being enquired by her mother she divulged the fact and more interestingly the classmates of the victim who according to the victim herself on the alleged date were also present to the residence of alleged accused for taking private tuition did not in any manner support the version of the victim girl and her parents. Thus it appears to me that the evidence of prosecution suffers from various infirmities which prosecution has failed to explain in the case and the Learned Trial Court ignoring the evidence on record of the accused i.e. DWs 1 and 2 on the ground that they might have under the pressure or threatening of the accused being their teacher to save him from the charge have deposed contrary against the prosecution case. There is also no evidence on record that those two boys had inimical relation at any point of time with the victim girl to draw an adverse inference and as already stated during their cross-examination by the prosecution save and except denial the prosecution could not take at least any negative inference against the convict-appellant from their evidence at the time of recording evidence by the court.

31. Furthermore, on perusal of hand sketch and the index of hand sketch map it also appears that in the index

of hand sketch map 'A' is shown as the alleged PO and 'L' is shown the tuition room. The prosecution also could not explain through the evidence of witnesses actually in which place the alleged occurrence took place. This discrepancy also creates serious doubt regarding prosecution story. More interestingly, the I.O. ought to have examined at least some of the students who used to go to the residence of convict-appellant for private tuition, but surprisingly the I.O. did not take any effort in this regard. Rather during cross-examination she stated that nothing was revealed to her that some other students used to take private tuition and also stated that victim used to take tuition class alone from the accused. In this regard it is further submitted that if for argument sake, it is found that the victim alone took private tuition in that case also the I.O. could examine the family members of the accused also to verify the truth. But I.O. did not proceed in this manner and where the victim herself during her cross-examination stated that on that relevant day some other students were there apart from her, so it was the bounded duty to the I.O. to examine some other students who attended private tuition in the residence of the convict appellant. But the I.O. also did not proceed in this way which shows clear negligence of investigation by the I.O. in the given case. The prosecution in course of hearing of argument could not explain anything in this regard.

32. Thus it appears to this court that the way the prosecution has projected this case and there are serious

contradictions and inconsistencies in the statements of the witnesses in course of trial, so it would be difficult for this court to believe the projected case of the prosecution. So after going through the evidence on record this court finds it difficult to drawn the hypothesis of the guilt against the convict-appellant. Thus in my considered view this is a fit case where the appellant deserves to be acquitted on benefit of doubt for want of proper evidence on record.

33. In the result, the appeal filed by the convict-appellant is hereby allowed. The judgment and order of conviction and sentence passed by the court of the Special Judge (POCSO), West Tripura, Agartala in connection with Case No. Special (POCSO) 27 of 2019 is thus hereby set aside. The appellant namely Samar Debnath is hereby acquitted from the charges levelled against him on benefit of doubt and he is set at liberty. The surety of the convict-appellant also stands discharged from the liability of the bail bond. Since the appellant has been acquitted from the charge levelled against him, so in pursuance of the order of the court the fine money amounting to Rs.20,000/-(twenty thousand) if already been deposited by the appellant be released by the Learned Trial court (Special Court) henceforth. With this observation, this case is disposed of on contest. Send down the LCR along with a copy of this judgment. Pending application, if any, Stands disposed of.

JUDGE