

HIGH COURT OF TRIPURA
AGARTALA
Cri. A. 20/2019

Sri Sajan Suklabaidya

son of Sri Jitendra Suklabaidya, resident of Purba Hurua,
P.S. Dharmanagar, District- North Tripura

----Appellant

Versus

The State of Tripura

represented by the Secretary, Department of Home,
Government of Tripura, Agartala

----Respondent

For Appellant(s)	:	Ms. M. Roy, Advocate
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP
Date of hearing & delivery of Judgment & Order	:	12.04.2021
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT(ORAL)

12/04/2021

Heard Ms. M. Roy, learned Counsel for the appellant as well as Mr. S. Ghosh, learned Additional PP appearing for the State-respondent.

2. This is an appeal under Section 374 Cr.P.C. against the judgment and order of conviction and sentence dated 12.06.2019 in connection with case No. Special (POCSO) 08 of 2018 whereby and whereunder the learned Special Judge (POCSO), Dharmanagar, North Tripura had convicted the appellant for the offence punishable under Sections 354 (A)(1)(i) of the IPC and under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO) and, sentenced him to suffer R.I. for one year and to pay a fine of Rs. 5,000/- with default stipulation for commission of offence under section 354 (A)(1)(i) of the IPC and further sentenced him to suffer R.I. for three years and to pay a fine of Rs. 5,000/- with default stipulation for commission of offence under Section 8 of the POCSO Act.

3. The facts, in brief, are that, the father of the victim girl lodged a complaint with the Officer-in-Charge of Dharmanagar PS stating inter alia that on the fateful day his victim daughter went to the house of her friend, namely, 'Sumi' and when they entered into the room of 'Sumi', one Sajan (the accused appellant herein) entering into the room locked the door and sexually harassed the victim by touching her breast and pulling her frock. Sumi tried to resist and warned the accused not to do the said act. At the same time, the victim girl raised alarm. Being frightened, the accused had fled away from the spot. Thereafter, both Sumi and the victim girl proceeded towards their house and just coming out of the house of Sumi, they met Smt. Sukla Rani Goswar (PW-4) and narrated the incident to her. Thereafter, the victim girl alongwith Sumi after coming to their house narrated the incident to her parents and, thereafter, the father of the victim i.e. the complainant (PW-3) Kiran Manikyha Sharma lodged the complaint.

4. The Officer-in-Charge of the police station on the basis of the aforesaid complaint registered Dharmanagar Women PS case No. 2016 WDN 026 under Sections 354 B of the IPC and under Section 4 of the POCSO Act. In course of investigation, the I.O. visited the place of occurrence, prepared the handsketch map, recorded statement of the available witnesses and arranged for recording of the statement of the victim girl under Section 164(5) of C.P.C. The I.O. also seized the birth certificate of the victim by preparing seizure list. Having found a prima facie case, as was established, the I.O. submitted charge sheet under Section 354 B of IPC read with Section 8 of the POCSO Act against the accused-appellant.

5. On receipt of the charge-sheet, cognizance of the offence punishable under Section 354 B of the IPC read with Section 8 of the POCSO Act was taken. Upon hearing the parties, charge was framed by the learned trial court, to which the appellants pleaded not guilty and claimed to be tried.

6. In order to prove the charge, the prosecution examined as many as 7 witnesses including the victim girl. At the closure of recording evidences, the learned trial court examined the accused under Section 313 Cr.P.C., wherein he was noticed about the incriminating statements and materials, as surfaced by the prosecution witnesses against him in course of trial to which the accused denied all the allegations levelled against him. However, he denied to adduce any evidence on his behalf. Thereafter, having heard the learned counsel appearing for the parties and on consideration of the evidences on record, the learned trial court returned the finding of guilt against the accused person and convicted and sentenced him, as aforesaid.

7. Being aggrieved and dissatisfied with the said judgment and order of conviction and sentence, the appellant had preferred the instant appeal before this court challenging the legality and propriety of his conviction and sentence.

8. Ms. Roy, learned counsel has submitted that there are lot of contradictions between the statement of the victim girl and the statement of the mother of the victim, Smt. Lina Sharma (PW-1)

9. Before advertng to the merits of the case and to examine the evidences on record, it should be made clear that PW-1, Smt. Lina Sharma is found to be a mental patient, but, after going through the evidence of PW-1, it has come to fore that Sumi Suklabaidya (PW-5) narrated the incident to her that when the victim had entered into her room then the accused came to her room and locked the door and touched the private parts of the victim.

9.1. PW-2, the victim girl, has categorically stated that on the date and time of the incident when she entered into the room of Sumi, the accused entering into the room locked the door and touched her breast and pulled her frock. She resisted and raised alarm. Her friend Sumi also warned Sajan, the appellant herein not to do this act. In the meantime, as both of

them cried out, the accused fled away from the place. Nothing material came out from her cross-examination.

9.2. PW-3, Kiran Manikya Sharma, the complainant, father of the victim deposed in the same tune as he stated in his complaint.

9.3. PW-4, Smt. Sukla Rani Goswami, deposed that she had seen the victim girl and Sumi coming out of that house. Both the victim and Sumi narrated the incident as committed by Sajan, the appellant.

9.4. PW-5, Miss Sumi Suklabaidya, the friend of the victim girl also corroborated the statement of the victim as well as PW-4.

9.5. PW-6, Dr. Arindam Das, is the doctor who medically examined the victim girl.

9.6. PW-7, Smt. Sampa Das, is the investigating officer who investigated the case.

10. On close scrutiny of the above evidences on record, in my opinion, the prosecution has been able to prove the charges framed against the appellant under Section 354 IPC read with Section 8 of the POCSO Act. The material part of the prosecution case that the victim on that fateful date and time visited the house of Sumi Suklabaidya (PW-5) when she entered into the room, the accused also entered and locked the door of the room. Thereafter, he touched the private parts of the victim girl. There is no discrepancies in the evidences of the victim girl and her friend Sumi, PW5.

11. I have noticed the statement which the victim girl made during her statement recorded under section 164(5) Cr.P.C.. There is no material deviation from the said statement which was made immediately after the incident before the learned Magistrate. The evidence of PW-4, also corroborated the statement made by the victim (PW-2) as well as PW-5. Though PW-4 did not see the incident, but, she is found to be very categorical to make her statement that she had seen the victim girl and PW-5 coming out of the house of Sumi and on the way to the house of the victim, both the

victim as well as Sumi narrated the incident, which the accused has committed upon the victim. The said statement which has been made immediately after the incident is the evidence of *res gestae* and is relevant under Section 6 of the Indian Evidence Act and, is admissible in evidence. Thereafter, after returning to the house, both PW-5 and the victim girl, PW-2, narrated the incident to their parents and after hearing the incident, the father of the victim (PW3) lodged the complaint.

12. On cumulative reading of the entire evidence, I find that the prosecution has been able to establish the entire chain of circumstance and there is no gap in the prosecution case. Accordingly, I find no reason to interfere with the findings of the learned Special Judge.

13. In the result, the appeal stands dismissed. The conviction and sentence as recorded by the learned Special Judge (POCSO), Dharmanagar, North Tripura stands affirmed.

Send down the LCRs.

JUDGE

सत्यमेव जयते