HIGH COURT OF TRIPURA
AGARTALA
Crl.A(J)No.88 of 2025

Sukumar Namasudra @ Suman,
S/o- Sri Krishna Chandra Namasudra,
Of- R.K. Nagar, Panchayet Tilla,
P.S.-Bodhjung Nagar, Dist-West Tripura.

---- **Convict-Appellant**(s)

Versus

The State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. Arjun Acharjee, Adv. Ms. Ankita De, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Soumyadeep Saha, Addl. P.P.
Date of hearing and date of delivery of Judgment and Order	:	**07.10.2026**
Whether fit for Reporting	:	**YES**

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

[Dr. T. Amarnath Goud, J]

This appeal is filed under Section 374 of Cr.P.C. challenging the judgment of conviction and sentence dated 18.08.2025, delivered by Learned Special Judge, West Tripura, Agartala in case No. Special (POCSO) 31 of 2021. By the said judgment of conviction and sentence, Learned Special Judge has convicted the appellant under Section 6 of the POCSO Act and sentenced him to suffer R.I. for 20(twenty) years and to pay a fine of Rs.5,000/- in default to suffer S.I. for 2(two) months. The appellant was further convicted under Section 449 of IPC and sentenced to suffer R.I. for 5(five) years and to pay fine of Rs.2,000/-, in default to suffer S.I. for 1(one) month. He was further convicted under Section 342 of IPC and was sentenced to suffer S.I. for

3(three) months and to pay fine of Rs.500/-, in default to suffer further S.I. for 10(ten) days.

2. Heard Learned Counsel, Mr. Arjun Acharjee appearing on behalf of the convict-appellant. Also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

3. **Arguments on behalf of the appellant in custody:**

3.1. At the very outset, Learned Counsel appearing for the convict-appellant, referring the contents of the F.I.R. and the evidence on record, submitted that the judgment delivered by Learned Trial Court suffers from perversity and infirmity and the same needs to be interfered with.

3.2. It was submitted by Learned Counsel for the convict-appellant that, except the victim, none of the prosecution witnesses had witnessed the alleged commission of the offence by the convict-appellant. According to Learned Counsel, the family members of the victim are all hearsay witnesses. So, there is no scope to place reliance upon their evidence to establish the alleged offence.

3.3. Learned Counsel further submitted that there was delay in lodging the FIR, which has not been satisfactorily explained by the prosecution. It was also submitted that there is no medical evidence on record to substantiate the prosecution case. However, the Learned Trial Court failed to appreciate the evidence on record properly and came to an erroneous observation that the present appellant committed the alleged offence and accordingly convicted him.

3.4. It was further submitted that there is no evidence on record that the appellant has committed any offence punishable under Section 6 of the POCSO Act. Further, referring the cross-examination of the victim, Learned Counsel submitted that during the cross-examination, the victim deviated from her earlier statement made before the I.O. As

such, there is no scope to place reliance upon her evidence. Learned Counsel further submitted that on the basis of the sole testimony of the victim girl, there was no scope to impose any punishment upon the appellant by the Learned Trial Court but, the Learned Trial Court did not appreciate the evidence on record of the victim in accordance with law and passed the impugned judgment of conviction and sentence, which needs to be interfered with.

3.5. Finally, Learned Counsel for the convict-appellant submitted that even if it is presumed that the present appellant has committed the alleged offence, the materials on record do not justify that the appellant has committed offence punishable under Section 6 of the POCSO Act. Rather, from the materials on record, at best Section 7 of the POCSO Act may be attracted. However, Learned Counsel submitted that in absence of any medical evidence on record, there is also no scope to impose any punishment under Section 7 of the POCSO Act. So, in summing up, Learned Counsel for the convict-appellant submitted that since the evidence of the prosecution suffers from infirmities and the victim also deviated from her earlier statement made before the I.O., so the judgment delivered by the Learned Trial Court needs to be interfered with. Learned Counsel, therefore, prayed that the impugned judgment be set aside and the convict-appellant be acquitted and set at liberty henceforth.

4. **<u>Arguments on behalf of the prosecution:</u>**

4.1. Learned P.P., appearing on behalf of the State-respondent, submitted that admittedly, at the time of alleged occurrence, excepting the victim, none of the prosecution witnesses were present. It was further submitted that offences of this nature are generally committed within the confines of the four walls, so there remains very least scope to get any direct evidence in support of the prosecution case.

However, here in the case at hand, the victim, being a minor girl aged about seven years, very specifically stated before the Learned Trial Court as well as during recording her statement before the Learned Jurisdictional Magistrate that on the alleged date and time the appellant had committed the offence.

4.2. Referring the cross-examination of the victim, Learned P.P. submitted that although the victim was cross-examined by the appellant in custody, subject to confirmation by the I.O., but surprisingly, in course of cross-examination of the I.O., the appellant did not raise any question regarding the alleged contradictory part of the statement made by the victim, as referred to by Learned Counsel for the appellant. So, Learned P.P. submitted that on this aspect, the present appellant is not entitled to get any benefit.

4.3. It was further submitted by Learned P.P. that the statement of the victim was recorded by the Learned Jurisdictional Magistrate, who was also examined as a prosecution witness. During her examination, she specifically stated that the victim had made the statement voluntarily and she duly identified the statement of the victim recorded by her, including her own signature as well as the signature of the victim, but the convict-appellant, by the trend of cross-examination, could not discard her evidence.

4.4. Furthermore, Learned P.P. submitted that considering the nature of the allegation, there was also no scope to get any medical evidence of the victim. It was further submitted that despite thorough cross-examination of the witnesses of the prosecution by the appellant, the appellant could not shatter their evidence at any length. So, there is no scope to presume the appellant to be innocent.

4.5. However, Learned P.P. fairly submitted that although the appellant has been convicted under Section 6 of the POCSO Act, but

having regard to the facts and circumstances of the present case, this case would more appropriately come under Section 9(m) of the POCSO Act. Learned P.P., therefore, submitted that if this Court converts the imprisonment of the appellant, in that case, he may be convicted under Section 9 of the POCSO Act and accordingly, urged for dismissal of this appeal.

5. **Gist of the prosecution case:**

5.1. In this case, prosecution was set into motion on the basis of an FIR laid by one Sanjay Chowdhury to O/C. R.K. Nagar PS, West Tripura, Agartala alleging *inter alia* that on 06.05.2021, at about 10 a.m., the informant along with his wife, had gone to Chandrapur, Agartala for the purpose of purchasing medicines. At that time, his daughter, the victim (name withheld), aged about 7(seven) years, was alone at home. It was alleged that a boy namely, Sukumar Namasudra (Suman), the appellant herein, entered his house and finding his daughter alone, forcibly raped her and threatened her not to disclose the matter to anybody.

5.2. It was further alleged that on 09.05.2021, when the mother of the victim took her for bathing, she noticed that the victim was experiencing pain in her private parts. On being asked by her mother about the same, the victim disclosed the said incident to her mother. After that, her mother narrated the fact to the present informant.

5.3. It was further stated that out of fear the victim had not disclosed the incident to her mother on time and due to social stigma, some delay was caused in lodging the FIR. The FIR was laid on 11.05.2021 and accordingly a case under Section 376(3)/506 of IPC, read with Section 6 of POCSO Act was registered. The case was investigated, and after completion of the investigation, the I.O. laid charge-sheet against the appellant. Before the Learned Trial Court,

charges were framed against the appellant under Section 449/342/376(AB)/506 of IPC and Section 6 of POCSO Act. The charges were read over to the appellant to which he pleaded not guilty and claimed to be tried.

5.4. To substantiate the charges, prosecution in this case, in total had adduced 14 numbers of witnesses, and the prosecution relied upon some documents, which were marked as exhibits.

6. We have perused the record of the Learned Trial Court, including the judgment delivered by the Learned Trial Court. We have also gone through the evidence on record.

7. For the sake of convenience, let us make some reference of the relevant part of the evidence on record.

7.1. PW1, Sri Braja Gopal Das is a Constable of Police and is a seizure list witness in respect of blood sample of the accused, i.e., the appellant herein.

7.2. PW2, Smt. Archana Debbarma is a Constable of Police. She is also a seizure list witness.

7.3. PW3 is the informant. He, in course of examination, supported his version made in the FIR. During cross-examination, he could not say the name of the doctor to whom they have consulted. From his cross-examination, save and except denial, nothing came out relevant.

7.4. PW4 is the victim. Before recording her statement, her veracity was tested by the Learned Trial Court, and being satisfied that she was able to give rational statement, her evidence was recorded. In course of her examination, she specifically stated that on the alleged day, the appellant entered the house and put off her wearing apparel and also put off his wearing apparel and pushed her on the sofa and thereupon he touched his private part to her private her (genital area).

She was produced before the Court when her statement was recorded. During her cross-examination, she was confronted with the alleged statement made by her before the I.O. that the accused put off his wearing apparel and touched her private part with his male organ, but such statement was not found, which was subject to confirmation by the I.O. However, the said statement was not confirmed by the I.O. during cross-examination by the accused appellant.

7.5. PW5, Sri Anjan Chowdhury is the brother of the informant. He deposed that he wrote the written complaint as per dictation of the informant i.e., his brother. He further stated that on the alleged day his brother and his wife went to consult a Doctor at Agartala leaving their minor daughter in the house, and on that day taking the advantage of her loneliness, the appellant committed rape upon her i.e. the victim. On 11.05.2021, he came to know about the said incident from his elder brother, wife of his elder brother and also from the victim. During investigation, the I.O. seized one original birth certificate of the victim by preparing a seizure list and obtained his signature upon it. On identification, the signature of witness on the seizure list is marked as Exhibit-4/2 and the accused was also identified by the witness.

During cross-examination, he stated that on 11.05.2021 he was posted at Budhjungnagar PS. Save and except denial, nothing came out relevant from his cross-examination.

7.6. PW6 is another Constable of Police, is the witness of seizure in respect of seizure of envelopes and 8(eight) numbers of plastic containers. He identified his signature on the seizure list marked as Exhibit-2/2 and confirmed Exhibit-MO.1. During cross-examination, nothing came out relevant.

7.7. PW7 is another seizure list witness.

7.8. PW8, Smt. Dorothy Jamatia is the Judicial Magistrate, 1st Class, Court No.1, Agartala, West Tripura who recorded the statement of the victim, and she identified the statement of the victim recorded by her as Exhibit-5 as a whole and identified her signature marked as Exhibit-5/2. She also identified the statement of the mother of the victim recorded by her and marked her and her signature as Exhibits. During cross-examination, nothing came out relevant.

7.9. PW9, Dr. Suravi Debbarma deposed that on 11.05.2021, she was posted as Medical Officer in the Ranirbazar PHC. On that day, she examined the victim, and upon examination she gave the final opinion the after getting FSL report, sexual assault cannot be ruled out. The witness identified the medical report of the victim prepared by her and marked it as Exhibit-6 and the signatures were marked as Exhibit-6/1 and 6/2, and also identified the sample. During cross-examination, nothing came out relevant.

7.10. PW10, Dr. Sabyasachi Nath, Senior Scientific Officer conducted examination of the seized exhibits and submitted report. He was declined to cross-examine by the accused appellant.

7.11. PW11, Tapas Malakar is the recording officer who registered the case on the alleged day i.e. on 11.05.2021 and identified the FIR marked as Exhibit-3/2, identified the printed FIR form marked as Exhibit-10 and his signature as Exhibit-10/1.

7.12. PW12, Sri Pradip Das deposed that in the year 2021, one day he went to the house of Sanjoy Choudhury for doing work at about 10.30 a.m. when he heard from Sanjoy Choudhury that Sukumar Namasudra badly touched to the private parts of the daughter of Sanjoy Choudhury.

7.13. PW13 was declared hostile by the prosecution. Nothing came out relevant from his cross-examination. PW14 is the I.O. who laid charge-sheet against the appellant.

8. **Discussion and conclusion:**

8.1. After hearing both the sides and also after perusal of the evidence on record and the judgment delivered by the Learned Trial Court, it appears that except the victim, there was no other independent witnesses who were present at the alleged place of occurrence at the relevant time as she was alone in the house. The victim was also examined by the prosecution as PW4, and prior to recording her evidence before the Learned Trial Court, her statement was also recorded by the Learned Jurisdictional Magistrate during the course of investigation. The victim, in her examination-in-chief stated that on the alleged day, the accused committed the offence upon her. Although, she was confronted with the relevant part of her incriminating evidence by the accused, but that was not confirmed by the I.O. at the instance of the accused. As such, as submitted by Learned Counsel for the appellant, no benefit can be extended to the convict-appellant. In the 164 statement also, the victim has categorically explained and recorded the crime incident occurred. It is an unshaken evidence of the victim both under 164 statement and as PW4.

8.2. More surprisingly, the concerned Judicial Magistrate, who recorded the statement of the victim, during the period of investigation, was also adduced by the prosecution in this case. She very specifically stated that the victim and the mother of the victim were produced before her and she duly recorded their statements. She identified the statements and the signatures also. The appellant, by the trend of cross-examination also could not discard their evidence.

8.3. Learned counsel for the appellant at the time of hearing, save and except the aforesaid submissions, could not place any other material argument in support of the appeal filed on behalf of the appellant. Learned Counsel for the appellant submitted that no independent witnesses was/were present or no witnesses were produced and the evidence of the victim was not trustworthy. However, from the conduct of the appellant in custody as well as from the cross-examination conducted by the accused to the witness of the prosecution, nowhere we find that the present appellant could make out any defence case to establish his innocence.

Further, during examination under Section 313 of Cr.P.C., no explanation was offered by the accused to show that he was totally innocent and against the incriminating statement of the victim, the appellant simply stated that the allegation is false.

8.4. However, after going through the evidence on record, specifically after going through the evidence of the victim and the Medical Officer, it appears to this Court that although the appellant has been convicted under Section 6 of the POCSO Act, but the prosecution in this case, in our considered opinion, has failed to establish the charge of the penetrative sexual offence by the appellant upon the victim.

8.5. To substantiate the same, the relevant portion of the 164 statement is reproduced hereunder:

> **"One day in the evening I was at home & my mother went out to buy medicines as my grandmother was not well & my father went to the market to buy dori (rope) *when Suman Kaku his real name is Sukumar came & opened my pant & touched his nunu with mine. Suman Kaku stays nearby our house."***

Relevant portion of PW4 statement is also reiterated:

> "….**Accordingly, I went to the room, *whereupon, he put off my wearing pant and he also put off his wearing apparels and pushed me on the sofa and thereupon, he touched his private part to my private part(genital area).***

> **<u>Cross-Examination by defence</u>**
> **.....the accused put off his wearing apparels and <u>*touched my private part with his penis*</u> but, such statement was not found (subject to the confirmation by the IO).”**

Section 7 of the POCSO Act provides as under:

> **“7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”**

In view of the evidence and Section 7 of the POCSO Act, it appears that it is a case of sexual assault but not a case under Section 6 of the POCSO Act. So, in the opinion of this Court, the appellant has committed an offence punishable under Section 7 of the POCSO Act, for which he is liable to be punished under Section 8 of the POCSO Act.

8.6. In the result, the judgment of conviction and sentence passed by the Learned Trial Court is modified to the extent that the appellant in this case is only found to be guilty for the offence punishable under Section 7 of the POCSO Act and accordingly, he is sentenced to suffer rigorous imprisonment for 5(five) years and also to pay a fine of Rs.10,000/- in default to suffer R.I. for a further period of 4(four) months under Section 8 of the POCSO Act.

8.7. The judgment of conviction and sentence in respect of the present appellant to the extent of other sentences are interfered with and modified to that extent.

8.8. The period of detention undergone by the convict-appellant be set off under Section 428 of Cr.P.C. corresponding to Section 468 of BNSS.

8.9. Fine money, if any realized, be deposited to the Learned Trial Court which also be given to the father of the victim by the

Learned Trial Court so that the same amount may be utilized for the welfare of the victim.

9. With this observation and direction, the present appeal stands allowed in part and disposed of.

10. Send down the LCR, if any, to the Learned Trial Court. Communicate a copy of this judgment and order to the Superintendent Central Jail for information and compliance.

Pending application(s), if any, also stands disposed.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
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