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**HIGH COURT OF TRIPURA**  
**AGARTALA**

**Crl.A.(J) 33 of 2020**

Sri Pintu Ghosh  
son of Lt. Suresh Ghosh,  
resident of Kalitilla, West Dukli,  
PS: Sreenagar, District: West Tripura

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

**Versus**

The State of Tripura.

**----Respondent(s)**

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For Appellant(s)	: Mr. S. Bhattacharjee, Adv.
For Respondent(s)	: Mr. S. Ghosh, Addl. PP.
Date of hearing	: 22.12.2021.
Date of pronouncement	: 05.01.2022
Whether fit for reporting	: YES

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE ARINDAM LODH**

**Judgment & Order**

This appeal by the convict is directed against the judgment and order of conviction and sentence dated 06.06.2019 delivered in Sessions Trial (T-1) 31 of 2015 by the Addl. Sessions Judge, Court No.5, West Tripura, Agartala. The appellant has been convicted under Sections 376(2)(f) of the IPC and sentenced to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs.5000/- and in default of payment of fine the appellant shall also suffer further simple imprisonment for 2 (two) months.

**[2]** Genesis of the prosecution is rooted in the complaint filed by one Anju Das (PW-4) disclosing that on 10.09.2012 the informant went out of her house for performing works under REGA leaving the

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victim alone in her house. Around 4 pm accused (Pintu Ghosh) allured the victim on the pretext of feeding chocolate, chips etc and took the victim to his house and committed rape upon the victim therein. On hearing alarm of the victim, Smt. Manti Ghosh (PW-5) wife of elder brother of accused rescued the victim when the accused fled away.

**[3]** Based on the said complaint dated 11.09.2012, Agartala PS case No. 246 of 2012 under Section 376(2)(f) of the IPC was registered and taken up for investigation. On completion of the investigation, final report was submitted in the court sending up the appellant to face the trial. The said case was registered in the court of the Chief Judicial Magistrate, West Tripura, Agartala. Since the offences disclosed in the police report are exclusively triable by the court of Sessions, on taking cognizance, the police papers were committed to the court of the Sessions Judge. In due course, the case was transferred to the court of the Asst. Session Judge, Court No.1 West Tripura, Agartala, from where the case was withdrawn and made over to the court of Additional Sessions Judge herein after referred to as the trial court.

**[4]** The trial court on 15.01.2014 framed the charge against the appellant under Section 376(2)(f) of the IPC for committing rape upon a minor girl (the name has been withheld for protection of her identity) aged about 4 years, daughter of Sri Dilip Das of West Dukli, Kali Tilla Madhuban. The appellant pleaded innocence and claimed to face the trial.

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**[5]** In order to substantiate the charge prosecution adduced 8 witnesses and introduced 9 documentary evidence including the medical examination report (Exbt-9). On completion of the recording of the prosecution evidence, the appellant was examined under section 313 of the CrPC to have his say on the incriminating material those surfaced in the evidence led by the prosecution. The appellant reiterated his plea of innocence and stated the evidence as brought against him are fabricated. On appreciation of the evidence, the trial judge returned the finding of conviction by the impugned judgment having observed that from the evidence of the victim and her mother (PW4) it has been established beyond reasonable doubt that she was taken by Pintu in his house by telling that he would give her chips and chocolate etc and then the accused undressed her and inserted her penis into her vagina is also not only admissible and relevant as to the conduct of the victim girl but also constitutes corroboration of her statement being made immediately after return of PW4. As per provisions of section 157 of the Evidence Act, read with illustration (j) to section 8 of the Evidence Act.

**[6]** The said finding of conviction has been challenged by the appellant broadly on the grounds that the said finding has emerged from improper appreciation of evidence inasmuch as appreciation has not been carried out by the established canons. It would have inferred that the prosecution story is unnatural, improbable and fabricated one. The evidence of PW-2, in particular, cannot inspire any confidence for the purpose of convicting the appellant. Thus, the charge having not

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been proved beyond reasonable doubt. The appellant is entitled to acquittal from the charge by setting aside the impugned judgment and order.

**[7]** Mr. S. Ghosh, learned Addl. P appearing for the state has at the outset submitted that the prosecution has established the charge with sufficient evidence and conforming to the standard.

**[8]** For the purpose of definition the term woman is defined under the IPC as a female human being of any age. In the present case on hand, the victim girl is minor four years still the case is not registered under POCSO rather it has been registered under Section 376(2)(f) where the minor girl is to be treated as woman. The victim girl when examined before the court as a prosecution witness (PW3) she was of 10 years of age by then. And the court has taken all measures to find out her mental ability to depose and after preliminary test and being convinced the court has proceeded with recording her evidence. The complaint made by the mother (PW4) of the victim on the date of incidence before the police station and her evidence deposed before the court, she has not shaken. The evidence given by her is affirmed. Likewise the child has narrated her version and the act committed by the accused has been explained in due course. Even the evidence of the victim girl is not shaken. There is no reason to disbelieve the complaint filed by the mother and the evidence of the victim girl. It is clear from the evidence of the victim girl as she has categorically stated that the accused penetrated her private part into her private

part. Because of [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN) pain, she cried and immediately the sister-in-law, Manti Ghosh (PW5) of the accused-appellant rushed to the scene and scolded the accused. The elder brother of the accused also rushed to the scene of occurrence and also scolded the accused. PW5 being the eye witness to the incidence Smt. Manti Ghosh (PW5) in her cross examination has been accused of changing her version and deposed before the court stating that the victim girl at the age of 4 visited her house to play with her one and a half year infant child. But when PW5 informed the victim that her infant child will not be able to play with her asked her not to disturb him and go away from her house, the victim girl started raising hue and cry. This statement of PW5 stands unbelieved as no minor girl would raise her voice when she is asked not to play with any child. This court also opines that this witness in order to protect her brother-in law-has changed her version.

**[9]** While discussing the admissibility of the evidence of child the trial court has observed that a child testimony can vary as it can be doctored by way of torture and coercing, and is not subject to absolute self authority and assessment. In a landmark judgment of Hon'ble Supreme Court in **Suresh Vs. State of UP** it was established that a testimony of a five year old child shall be admissible, so long as the child is able to comprehend and understand the question of the given issue. Hence it was declared that there is no minimum required age of a person to legally testify in the Court. Section 118 of Indian Evidence Act mentions who is considered as competent enough to testify in the court

of law. It provides that all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years. Hence, it become clear that one shall testify in case in competent enough and if not considered otherwise by the court of law.

**[10]** While considering the evidence advanced by the mother (PW4) of the victim, the trial court has rightly observed that a mother is a protector disciplinarian and friend of a child. A mother is also a selfless loving human who sacrifices many of her wants and needs for the wants and needs of her child. A mother works hard to make sure that her child is safe equipped with the knowledge skills and abilities to make it a competent human being. It is for that reason, it is unbelievable to say that a mother would put her daughters entire life at stake by involving her in a serious matter like the case at hand. PW4 being mother of the victim girl would never put her daughter's entire name, fame and even entire life at stake by giving her daughter a label of a victim of sexual assault.

Having observed thus, this court is not inclined to interfere judgment passed by the trial court and affirms the same.

Accordingly, the appeal stands dismissed.

Send down the LCRs forthwith.

**JUDGE**

**JUDGE**