

**HIGH COURT OF TRIPURA
AGARTALA**

Criminal Appeal No.03 of 2022

Sri Tanujit Debnath son of Sri Tapan Debnath resident of Khamar Bari, P.S.
Jirania, District- West Tripura

..... Appellant(s)

V E R S U S

The State of Tripura

.....Respondent(s)

For Appellant(s) : Mr. Saugat Datta, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **20th January, 2023.**

JUDGMENT & ORDER (ORAL)

Heard Mr. Saugat Datta, learned senior counsel appearing for the appellant and also heard Mr. S. Debnath, learned Additional Public Prosecutor appearing for the respondent-State.

[2] This appeal filed under Section 374 of the Code of Criminal Procedure (*Cr.P.C., for short*) is directed against the judgment and order of conviction and sentence dated 23.02.2022 passed by the learned Special Judge(POCSO), Agartala West Tripura in Case No. Special(POCSO) 17 of 2017 (POCSO) whereby the learned Special Judge convicted the appellant to suffer SI of 3(three) years along with fine of Rs.2000/- for the offence punishable under Section 366 of IPC, SI for a term of 3(three) years along

with fine of Rs.2000/- for the offence of under Section 354 of IPC and also suffer SI for a term of 2(two) years for the offence under Section 343 of IPC and also suffer SI for a term of 3(three) years and to fine of Rs.2000/- for the offence under Section 8 of the POCSO Act and the sentences shall run concurrently.

[3] The facts of the case revealed from the F.I.R. is that one Smt. Anima Das, wife of Sri Biswajit Das of Joynagar P.S, Jirania submitted a written complaint that on 22.02.2017 in the morning at about 9.00 am the daughter of the informant i.e. the victim aged about 14 years left her dwelling house for private tuition at Joynagar but she di not return back. Later she came to know from one Jhulan Barman that one Tanujit Debnath kidnapped her minor daughter (victim girl).

[4] On receipt of the said complaint, the officer-in-charge of Jirania Police Station lodged an FIR and registered the case vide No.2017/JRN/010 dated 24.01.2017 under Sections 366, 354 of IPC and under Section 8 of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act, 2012 for short). On the basis of FIR, and during investigation the I.O. visited the place of occurrence and prepared hand sketch map. Subsequently, the IO examined all the witnesses available and recorded their statement under

Section 161 of Cr.P.C. Subsequently, he arrested the appellant Tanujit Debnath and produced him before the Court.

[5] To prove the charge, prosecution examined as many as 10 witnesses and they were also cross-examined by defense and subsequently the accused was examined under Section 313 of Cr.P.C and after taking into consideration the documents on record, the learned Special Judge (POCSO), Agartala, West Tripura framed charge against the accused person under Sections 366, 354 and 343 of IPC read with Section 8 of the POCSO Act to which he pleaded not guilty and claimed trial.

[6] After hearing the argument of both sides, the learned Special Judge(POCSO), Agartala West Tripura in Case No. Special(POCSO) 17 of 2017 convicted the appellant to suffer simple imprisonment of 3(three) years along with fine of Rs.2000/- for the offence punishable under Section 366 of IPC and to suffer simple imprisonment for a term of 3(three) years along with fine of Rs.2000/- for the offence of under Section 354 of IPC and to fine of Rs.2000/- and to suffer simple imprisonment for a term of 2(two) years for the offence committed by him punishable under Section 343 of IPC and also suffer simple imprisonment to a term of 03(three) years and to pay a fine of Rs.2000/- for the offence committed under Section 8 of the POCSO Act. The operative portion of the judgment reads as follows :

“Taking all the aspects into consideration, I hereby sentence the convict Sri Tanujit Debnath to suffer simple imprisonment for a term of three years and to pay fine of Rs.2000/- for the offence committed by him punishable under Section 366 of IPC. In default of payment of fine, the convict shall suffer simple imprisonment for a further term of one month.

For commission of the offence punishable under Section 354 of IPC, I do hereby sentence the convict to suffer simple imprisonment for a term of three years and to pay fine of Rs.2000/-. In default of payment of fine, the convict shall suffer simple imprisonment for a further term of one month.

For the commission of the offence punishable under Section 343 of IPC, I do hereby sentence the convict to suffer simple imprisonment for a term of 2 years.

For commission of the offence punishable under Section 8 of the POCSO Act, I do hereby sentence the convict to suffer simple imprisonment for a term of 3(three) years and to pay fine of Rs.2000/-. In default of payment of fine, the convict shall suffer simple imprisonment for a further term of 1(one) month.”

[7] Being aggrieved and dissatisfied with the judgment of the learned Special Judge, the appellant has filed this appeal seeking the following reliefs:

- “(i) Admit the appeal;
- (ii) Call for the lower court record;
- (iii) Issue notice upon the respondents;
- (iv) Suspend the order of sentence passed by the judgment dated 23.02.2022 passed by the Ld. Special Judge(POCSO), Agartala, West Tripura in Case No. Special (POCSO) 17 of 2017 and also to release the appellant suspend the order of conviction and sentence passed by the Ld. Special Judge, Court No.3, Agartala, West Tripura in Case No. Special (POCSO) 17 of 2017 and to release the appellant on bail till the final disposal of the appeal and;

(v) After hearing the both sides, set aside the order of sentence passed by the learned Trial Court.”

[8] Mr. Saugat Datta, learned counsel appearing for the appellant, contends that the prosecution has miserably failed to prove its case beyond reasonable doubt and the allegations levelled against the accused person are false and there are also discrepancies in the prosecution witnesses. He further contends that the findings given by the learned trial Court are illegal and erroneous and the evidence does not construe any offence for which the appellant is convicted and the order of conviction and sentence is liable to be set aside.

[9] On the other hand, Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State submits that as per the version of the mother of the victim girl, she was a minor at the time of commission of offence and the learned Judge has correctly convicted the appellant and, accordingly, prays for dismissal of the instant appeal filed by the appellant.

[10] Having considered the submissions of learned counsel for both the parties, this Court on appreciating the evidence of the prosecution witnesses is of the considered view that since the age of the victim girl is not proved by any documentary evidence, the ingredients of Section 8 of the

POCSO Act has not been established beyond reasonable doubt and also in the light of the evidence of the victim girl, this Court finds that this is not a case of kidnapping. Accordingly, the appeal is allowed and the judgment of conviction and sentence dated 23.02.2022 passed by the learned Special Judge(POCSO), West Tripura, Agartala in Case No. Special(POCSO) 17 of 2017 is hereby set aside.

[11] Resultantly, this criminal appeal is allowed and the appellant is acquitted of the charges levelled against him.

[12] Send down the lower court records forthwith.

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

CHIEF JUSTICE (ACTING)

Dipesh