

**HIGH COURT OF TRIPURA
AGARTALA**

Criminal Appeal No.04 of 2022

Sri Sahid Miah (40 years), son of late Hasem Miah, resident of Samukcherra
(Kuki Cherra), P.S. Kakraban, District- Gomati

..... Appellant(s)

V E R S U S

The State of Tripura

.....Respondent(s)

For Appellant(s) : Mr. T.D. Majumder, Sr. Advocate,
Ms. R. Debbarma, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor,
Mr. S. Ghosh, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **16th January, 2023.**

Whether fit for reporting : YES / NO.

JUDGMENT & ORDER (ORAL)

Heard Mr. T.D. Majumder, learned senior counsel appearing for
the appellant and also heard Mr. S. Ghosh, 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 dated
18.02.2022 passed by the learned Special Judge, Gomati District, Udaipur in
Case No. Special 06 of 2020 (POCSO) whereby the learned Special Judge

has convicted the appellant under Sections 354 of the Indian Penal Code (*IPC, for short*) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (*POCSO Act, 2012 for short*) and sentenced him to suffer R.I. for three years and also to pay a fine of Rs.5,000/- in default to suffer R.I. for two months.

[3] The facts of the case revealed from the F.I.R. as well as from record, in a nutshell, are that one Rupa Begam lodged an FIR with O.C. Kakraban Police Station on 04.05.2020 *inter alia* alleging that her daughter Pinki Begam (12 years) was molested in the neighbouring house while she went to bring Chungi (an implement) used for making rice cake. Taking the advantage of vacant house, the accused appellant called to touch her breast and other parts of her body for ill motive. Her daughter dashed the accused and fled away from the place and informed the incident to us at home. Said complaint was registered as Kakraban P.S. Case No. 2020 KKB 031 dated 04.05.2020 under Section 354 of IPC and Section 8 of POCSO Act, 2012.

[4] In course of investigation the police charge sheeted the accused vide charge sheet No.24 of 2020 dated 31.05.2020 and prayed before the Court to summon the accused to face trial. The learned trial court took cognizance of the case and framed charge on 15.01.2021 under Section 354

of IPC and Section 8 of POCSO Act, 2012. The accused pleaded not guilty and claimed to be tried. To prove the charge, the prosecution produced 9 witnesses and produced 7 documents which were duly marked exhibits and only material object was also produced i.e. Chungi. No defence witnesses were produced. The learned trial Court examined the witnesses under Section 31 of Cr.P.C and afforded the accused-appellant to explain the circumstances.

[5] After hearing the argument of both sides, the learned Court convicted the appellant under Section 354 of IPC and Section 8 of POCSO Act, 2012 and heard him on the question of sentence. Upon hearing him the learned Court sentenced the accused appellant under Section 8 of POCSO Act, 2012 for rigorous imprisonment of three years and a fine of Rs.5,000/- in default to suffer R.I. for further 2(two) months. The operative portion of the judgment reads as follows :

“In the result thereof, the convict namely, Sahid Miah is sentenced to suffer rigorous imprisonment for a period of 3(three) years for his conviction under Section 8 of the Protection of Children from Sexual Offences Act and is also sentenced to pay a fine of Rs.5,000/-(rupees five thousand) in default to suffer rigorous imprisonment for 2(two) months. Fine money if realized shall be paid to the victim girl. The period of detention in custody suffered during the investigation or trial of this case shall be set off from the substantive sentence of imprisonment.”

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

- “(i) For the reasons stated above and as may be argued at the time of hearing, this appeal may kindly be allowed;
- (ii) The record and proceedings in Special (POCSO) 06 of 2020 in the court of the Ld. Special Judge, Gomati Tripura, Udaipur be called for;
- (iii) The order dated 18.02.2022 under appeal be set aside and quashed and orders deemed just and proper be kindly passed;
- (iv) The appellant be kindly acquitted from the offence punishable u/s 8 of the POCSO Act, 2012;
- (v) During the pendency of this appeal, the orders granting bail be kindly issued with immediate effect in favour of the appellant;
- (vi) Any other orders in the interest of justice be kindly passed, for which act of grace and favour, this appellant as bounden in duty shall ever pray.”

[7] Mr. T.D. Majumder, learned senior counsel appearing for the appellant, contends that since the age of the victim girl was not proved, Section 354 of IPC will come and not POCSO and prays that the accused-appellant may kindly be acquitted from the offence under Section 8 of the POCSO Act.

[8] On the other hand, Mr. S. Ghosh, learned Addl. Public Prosecutor appearing for the respondent-State, in rebuttal of the submissions advanced by the learned counsel for the appellant contends that regarding age, the mother of the victim girl has specifically stated as 12 years and there

is no denial to that effect and the victim girl while deposing stated that her age is 13 years i.e. one year after the incident she was deposed.

[9] The only point which has been asserted by the learned senior counsel for the appellant Mr. T.D. Majumder that the age of the victim girl was not proved on the strength of birth certificate and on the oral statement made by the parents though to some extent can be relied but total credence cannot be given when it comes to the case of punishing the accused person. Mr. S. Ghosh, learned Additional Public Prosecutor appearing for the State submits that since the statement of the mother and the victim girl say that she was 12 years and at the stage of evidence she was 13 years, it can be considered as a POCSO matter. However, when it comes to imposing punishment on the accused person, this Court *prima facie* feels that a proper adjudication of retention be placed on record to sentence a person and since there is no evidence on the point to highlight the age of the victim girl, this Court considers that the matter does not fall under Section 8 of POCSO Act but insofar as Section 354 of IPC is concerned, it is a case of imposing punishment upon the accused.

[10] Having considered the submissions of learned counsel for both the parties, this Court on appreciating the evidence of the prosecution

witness has come to the conclusion that the ingredients of Section 8 of the POCSO Act with regard to molestation of the victim girl has not been established beyond reasonable doubt. Therefore, the punishment imposed by the learned Special Judge (POCSO) is modified and converted into 1(one) year under Section 354 of IPC. Whatever the amount of period he was in jail that would be computed from the period of sentence.

[11] With the above observations, this criminal appeal is partly allowed and disposed of.

[12] Send down the lower court records forthwith.

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

CHIEF JUSTICE (ACTING)

Dipesh