

HIGH COURT OF TRIPURA
AGARTALA

Crl.A.No.12 of 2024

- 1. **Sri Dharanjoy Reang,**
S/O Sri Alanga Reang
Of Shikaripara,
P.S.- Gonda Twisa,
Dist.- Dhalai Tripura.
- 2. **Sri Ramoni Reang,**
S/O Sri Ajoy Ram Reang
Of Shikaripara,
P.S.- Gonda Twisa,
Dist.- Dhalai Tripura.

.... Appellants.

Versus

The State of Tripura

.....Respondent.

For Appellant(s)	:	Mr. Subrata Sarkar, Sr. Adv. Ms. Ayesha Saha Hirawat, Adv. Ms. Megha Sarkar, Adv.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
Date of Hearing	:	18.07.2025
Date of delivery of Judgment and Order	:	25.07.2025
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and order of conviction and sentence dated 05.03.2024 delivered by Learned Special Judge (POCSO), Ambassa, Dhalai in connection with Case No.Spl. (POCSO) 03 of 2023. By the said judgment and order of conviction and sentence, Learned Trial Court found the present appellant guilty for the commission of offence punishable under Section

354(A)/376/511/34 of IPC and Section 8 of POCSO Act and accordingly sentenced both the convicts to suffer R.I. for 1 year each and to pay a fine of Rs.5000/- each i.d. to suffer further R.I. for 3 months each for commission of offence punishable under Section 363 of I.P.C. and also sentenced each of the appellants to pay a fine of Rs.50,000/- each i.d. to suffer further R.I. for 6 months for commission of offence punishable under Section 354A of IPC and each of the appellants is further sentenced to suffer R.I. for 1 year and fine of Rs.50,000/- each i.d. to suffer further R.I. for 6 months for commission of offence punishable under Section 511 of IPC and further sentenced to suffer R.I. for 3 years each with a fine of Rs.50,000/- each i.d. to suffer further R.I. for 6 months each for commission of offence punishable under Section 8 of POCSO Act, 2012. It was further ordered that if the fine money is realized the same will be paid equally to the victims.

2. Heard Learned Counsel, Smt. Ayesha Saha Hirawat who argued the case being instructed by Learned Senior Counsel, Mr. Subrata Sarkar appearing on behalf of the appellants and also heard Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent.

3. At the time of hearing, Learned Counsel, Ms. Ayesha Saha Hirawat first of all drawn the attention of the Court to the fact that in this case, the prosecution has failed to prove the charge levelled against the convicts. Learned Counsel further

drawn the attention of the Court to the fact that in the FIR there was no explanation regarding the delay, and before the Learned Trial Court, the prosecution failed to explain the reason for the delay in lodging the FIR. According to the prosecution, the alleged accident took place on 23.12.2022, but the FIR was lodged at the Police Station on 24.12.2022. There was no explanation in this regard from the side of the prosecution.

4. Learned counsel for the appellants further submitted referring the contents of the hand sketch map of the place of occurrence (PO), and drawn the attention of the Court that if the hand sketch map of the PO is examined and scrutinized, it will be found that there are nearby houses, but none of the neighboring persons to the alleged PO were cited as witnesses in this case, which casts a doubt about the prosecution story. It was further submitted that some of the prosecution witnesses, during their deposition before the Court, stated that the offending vehicle was removed from the PO at the time when the victims were recovered. However, referring the final report of the Investigating Officer (I/O), Learned Counsel tried to draw the attention of the Court that the same vehicle was recovered in the area of Panchajoy Para on Panchajoy Para road, which are contradictory to each other, and there was no explanation in this regard from the side of the I/O.

5. Learned Counsel for the appellants also stated that in this case, the prosecution could not produce any medical report of the alleged victim before the Court to support the prosecution case. Furthermore, all the witnesses of the prosecution are near relatives, and from the contents of the FIR, it appears that on the basis of Google Map location, the exact location of the victim was traced by the relatives on that relevant day which was not corroborated by the victims of this case. Even though the victims possessed mobile phones, they did not report anything to the informant or his family members, which also creates serious doubts about the prosecution story. Learned Counsel also drawn the attention of the Court that, in order to substantiate the charge under the POCSO Act, the prosecution could not produce any school certificate, birth certificate, etc., to prove the age of the victims. Only the informant in the FIR stated the age of the victims as 15 and 16 years, which also creates doubt about the prosecution story, especially when none of the prosecution witnesses deposed before the Court regarding the exact age of the victims. As such, the prosecution has totally failed to prove the charge under the POCSO Act.

6. Learned Counsel for the appellants also drawn the attention of the Court to the cross-examination of the I/O, who specifically stated that during the course of investigation, he did not collect any age proof certificate of the victims. This

shows that there was no scope on the part of the Learned Trial Court to convict the appellants under Section 8 of the POCSO Act. It was further submitted that from the evidence of the prosecution, it appears that a lady was present inside the vehicle, but strangely the prosecution neither produced that lady as a witness nor was there any effort from the side of the I/O to trace out that lady in support of the prosecution case. It was also submitted that PW-19, the I/O, stated that all the witnesses are hearsay witnesses, so no reliance could be placed upon their evidence. Furthermore, regarding removal of the vehicle, the witnesses gave different versions.

7. Learned Counsel for the appellants again submitted that even if the evidence of the victims are carefully examined, the same is contradictory to each other, and even their evidence contradicts their judicial statements made before the Court. Situated thus, Learned Counsel, Ms. Ayesha Saha Hirawat urged before the Court that the evidence of the prosecution suffers from various infirmities, and there is no scope to presume the appellants to be involved for the alleged occurrence. As such, she prayed for acquittal of the appellants from the charge of this case by allowing the appeal.

8. On the other hand, Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the prosecution, submitted that in this case, the prosecution has adduced 19 witnesses, and the evidence of PWs 1, 2, 3, 4, 5, 6, and 19 is very much relevant

for decision of this case. He also drew the attention of the Court to the cross-examination of the said witnesses and submitted that the appellants, during cross-examination of those witnesses, could not in any manner discredit or dismantle the evidence on record regarding the innocence of the accused persons. Furthermore, during cross-examination of the said witnesses, there was no single suggestion regarding the location of the vehicle or its recovery. Moreover, from the cross-examination of the said witnesses, it is crystal clear that there was no defence from the side of the appellants to disbelieve the age of the victims as minors.

9. Learned Addl. P.P. also submitted that during examination of the appellants under Section 313 of Cr.P.C., except for a bare denial, no other explanation was offered by the accused persons regarding their innocence in relation to the alleged crime. It was further submitted that except for PWs 1, 2, 3, 4, 5, 6, and 19, the other witnesses are hearsay witnesses and deposed before the Court after hearing the facts from the informant or the victims. So there is no scope to disbelieve their evidence either, and even during cross-examination, the appellants could not discredit their testimony on record.

10. Situated thus, according to the Learned Addl. P.P., there is no scope to disbelieve the prosecution case, and the prosecution has reasonably and rightly proved the charges

against the accused persons before the Learned Trial Court. Therefore, he urged for dismissal of the appeal by upholding the judgment and order of conviction and sentence.

11. In this case prosecution has set into motion on the basis of an FIR laid by one Pradip Reang on 24.12.2022 to the Officer-in-Charge of Ganganagar Police Station alleging *inter alia* that on 23.12.2022 at around 6:00 PM, his daughter and his brother's daughter [name not withheld], aged about 15 years, went to the residence of one Bishnuram Reang to attend a ceremony in connection with the engagement of his sister's daughter, as on that day the engagement was scheduled to be finalized. Approaching near Ashu Academy School, they were allegedly forced into a vehicle by some persons of one Kwid white coloured vehicle bearing registration number TR-04C-0544. When the said victims did not return to Bishnuram Reang's residence, all their relatives searched for them but could not trace them out. Upon establishing contact with the victim, it was revealed that a second individual had arrived on a motor bike and, after joining the accused persons, attempted to forcibly outrage their modesty and commit sexual assault. The relatives of the victims traced the mobile phone location and proceeded towards Killa Para besides the road near Ganga Bari CRPF camp and when they reached there around 9:00 PM, the accused persons who were present, fled away from the

scene. Based on the narration from his daughter, the informant laid the FIR.

12. On the basis of this FIR, Ganganagar P.S. Case No. 04 of 2022 under Sections 363/354A/511 of IPC read with Section 8 of the POCSO Act was registered. The Investigating Officer, after conclusion of investigation, submitted charge-sheet against the present appellant along with one Rakesh Tripura. As Rahul Gandhi Tripura @ Rakesh was declared as a children in conflict with law, by order dated 04.04.2023 passed by the Learned Special Judge (POCSO), Dhalai Judicial District, Ambassa, his case was referred to the Juvenile Justice Board, Kamalpur, Dhalai and the present appellant faced trial.

13. Before the Learned Special Judge, charges were framed against the present appellants under Sections 363/354A/511 of IPC and Section 8 of the POCSO Act, 2012 the appellants pleaded not guilty, and claimed to be tried. To substantiate the charges, the prosecution, as already stated, has adduced in total 19 numbers of witnesses. The appellant was examined under Section 313 of Cr.P.C., to which they pleaded not guilty. Finally, on conclusion of trial, the Learned Special Judge found the appellants to be guilty, convicted them accordingly, and the present appeal has been filed challenging the said judgment and order.

14. I have heard arguments of both the sides and gone through the findings of the Learned Trial Court. To substantiate

the charge, the prosecution in this case has adduced 19 numbers of witnesses.

PW1 is the informant of this case, who is also father of one of the victim. In course of his examination-in-chief, he reiterated the contents of the FIR. During cross-examination, he stated that the victims had their own personal mobiles, but no contradictions could be elucidated by the defence to discredit his evidence.

Similarly, PW2 is the father of another victim who confirmed the version of PW1 and stated that the present appellants abducted his daughter and another girl with bad motive and tried to commit sexual assault upon them.

Similarly, PW3, one of the victims, stated in her examination-in-chief that a few months ago, she along with her younger sister was going to the residence of Binya Rung Reang to attend the marriage function of her daughter and when they reached near Ashu Academy School, they noticed a white colour car was waiting besides the road and there was a person besides the driver of the vehicle and another was on a motor bike. The appellants forcibly made them board the vehicle. They were taken to Gandacherra and again returned back to Killa Para. Thereafter again both the victims were taken to Gandacherra and on the way to Gandacherra the accused persons touched their body and private parts forcibly against their will with an intention to do sexual act but failed. She

further stated that the accused persons fled away from the spot when her father and others arrived. She identified the accused persons during her deposition.

During cross-examination, she stated that there was a lady present inside the vehicle at that time. She also admitted the fact that she and her sister had possession of mobile phones but did not make any calls at the relevant point of time.

PW4, Saishirung Reang is the wife of the informant (PW1). She corroborated the version of her husband in her examination-in-chief, but during cross-examination, except for affirming her faith in the testimony of the informant but nothing came out relevant.

PW5, another victim and daughter of Bishnu Ram Reang, stated that on 23rd day of December she herself along with another victim were going to attend that engagement ceremony of the daughter of her aunt and they reached near Ashu Academy School they could noticed that the accused persons were waiting there with a white colour van and when they went nearby the vehicle the accused persons called them and offered themselves to give a lift so that they may go to Ganganagar as early as possible. Accordingly they boarded the vehicle on good faith but while they reached near destination at Ganganagar they did not stop the vehicle and subsequently a lady boarded in the said vehicle and they have taken towards

Gandhacherra. On the way to Gandacherra somewhere they have been offered to eat some food but they did not accept. Again they have been taken towards Killa Bari Para and in the meantime, another person joined with them riding on a motor bike. The accused persons forcibly touched their body, thigh and private parts one after another in presence of the said lady inside the vehicle and subsequently the accused persons came to learn that some persons were appearing there and apprehending some danger, they fled away leaving them in the vehicle with the said motor bike. She was produced before the Court and made a statement.

During cross-examination save and except denial nothing came out relevant.

Similarly, PW-6 Lum Bahadur Thapa deposed that on 23.12.2022 he was in his house in the evening while Pradip and Bishnuram came to his house and reported that their daughters were kidnapped by some miscreants where they were going to attend engagement ceremony at Ganganagar and somebody reported that some miscreants seeing the girls going alone towards Ganganagar through the village road, they were forcibly dragged inside the white Alto Van and they were taken away towards Gandacherra with an ill-motive. Thereafter, finding no other alternative for himself along with said Pradip Reang and Bishnu Ram Reang and other people of the locality rushed out to trace the location of the vehicle and

to recover the victims safely. During search, while they crossed Dangabari BSF Camp area found the vehicle lying abundant besides the road and the victim-girls were inside the vehicle but the driver and his associates could not be traced at the material time either from the spot or the adjacent area. In course of discussions with the victims, they reported them while they were going to attend their relative's house at Ganganagar that time the accused persons forcibly lifted the girls inside the vehicle and taken away towards Gandacherra. On the way, the accused persons molested them inside the vehicle and also tried to have sexual intercourse with them. Besides the driver two others were there in the group, one of the associates followed the vehicle bearing No.TR-04-C-0544 riding on his motor bike. The accused persons molested the girls one after another but finally somehow they could guess that some people appearing on the spot suddenly the miscreants fled away. Further, accused Dharanjoy Reang was known to the victims as he belongs to Ganganagar. That time they came to know about the other accused persons. Thereafter, the victims and the vehicle were removed to their area and subsequently the FIR was laid by him.

During cross-examination save and except denial nothing came out relevant.

Similarly, PW-7, Milanjoy Reang, also deposed in the same manner like PW-6. His evidence also could not be dismantled.

PW-8, Mungthangha Reang, deposed in the same manner like PW-6 and PW-7. During cross he stated that he did not speak to the victim girls.

PW-9, Mandrijoy Reang, deposed in the same manner like PWs-6,7,8. During cross nothing came out relevant.

PW-10, Katerai Reang, also supported the prosecution story. The appellants could not shake out his evidence during cross-examination.

PW-11, Ratan Debbarma and PW-12, Chiranjit Deb are the seizure list witnesses.

PW-13, Surjya Kanta Jamatia is Officer-in-Charge of Ganganagar P.S. who registered the case after receipt of FIR.

PW-14, Benedict Reang is the registered owner of the vehicle who deposed that he has sold the vehicle to Nibash Reang but the ownership was not changed. He could not say anything about the prosecution case.

PW-15, Arunjoy Reang deposed that on the alleged day after hearing the information they proceeded towards Gandacherra to trace out the victims and while they reached at Killa Para, they could notice that the victim girls were inside a vehicle but no other person could be detected. They removed

the vehicle and the victims to their locality and could know the said fact and he deposed that one of the miscreants is Dharanjoy Reang.

During cross-examination nothing came out relevant.

PW-16, Hebi Ram Reang deposed that on 23.12.2022 in the evening at about 07:15 pm the informant informed him that some miscreants kidnapped his daughter. Thereafter, on hearing the information while he was returning home he could see that a vehicle bearing No.TR-04-C-0544 was passing through Jagabandhu Para Road towards Ganganagar. Thereafter, he talked with Pradip Reang over telephone when he could know the informant was proceeding towards Ganganagar to trace out the vehicle and rescue their kids and he was asked to follow the vehicle but he failed as the vehicle accelerated its speed. Later on, on Ampa Road there was a Camp of CRPF and accordingly they talked with the villagers to know that whether they could see any vehicle but they answered in affirmative. The villagers said that they saw a white car proceeding towards Ampa Road and later on they could find the vehicle on Ampa Road at Killa Para with three boys and the victims were inside the vehicle. But the accused persons somehow could manage to escape. But he could not identify the number of motor bike. However, he could identify two of the accused persons as they were belonged to his

locality and they were Rakesh Tripura and Ramani Reang. Thereafter, the victims were recovered and could know everything from the victims and the case was submitted.

During cross-examination save and except denial nothing came out relevant.

PW-17, Unajoy Reang could not say anything about the prosecution case.

PW-18, Mina Sinha deposed that she examined and recorded the statements of the victims under Section 161 of Cr.P.C. when the victims stated her that the accused persons outraged their modesty by touching their breast and different parts of the body also reported that the accused persons tried to commit rape upon them.

During cross-examination nothing came out relevant.

PW-19, Swapan Sinha is the I/O who laid the charge-sheet.

During cross-examination, he stated that he did not collect the age proof certificates of the victims.

These are the synopsis of the evidence on record.

15. From the evidence on record, it appears that to the alleged PO save and except the two victims no other persons were there but from the evidence of PWs-1 to 6 and other witnesses it is crystal clear that on the alleged date the present accused-appellants and another committed the offence. The

appellants by their cross-examination could not in any manner discard the evidence on record of the prosecution witnesses.

16. Admittedly, in this case the prosecution could not prove the birth certificate or any other certificate to substantiate the age of the victims. Even no medical report is produced to substantiate the age of the victims. Even there is no evidence on record that the victims had undergone ossification test. The informant stated that the ages of the victims were 16 and 15 years, respectively. Admittedly, in course of cross-examination, there was no suggestion from the side of the appellants disputing the age of the victims of this case.

17. Furthermore, the I/O also specifically stated that he did not collect any age proof certificates of the victims of this case. In this regard, Learned Counsel for the appellants relied upon two citations reported in **(2002) 6 SCC 494** in **Toran Singh Vs. State of M.P.** wherein in Para Nos.5 and 8 Hon'ble the Apex Court observed as under:-

"5. We have carefully considered the submissions made by the learned counsel for the parties. Ordinarily this Court does not disturb or upset the concurrent findings recorded by the trial court as affirmed by the High Court, entering into the domain of appreciation of evidence. But in a case like this where there was no proper and objective appreciation of evidence by the trial court and the High Court, as a first court of appeal, fails in its duty of reappreciating the evidence and reviewing the evidence objectively and simply endorses the conclusion arrived at by the trial court resulting in patent miscarriage of justice, not only this Court interferes but it becomes the duty of this Court to do so to prevent miscarriage of justice. In this case we have no hesitation to upset the order of conviction

and sentence passed against the appellant for reasons more than one given hereinbelow:

(i) The motive for the alleged offence is that the deceased had eloped with the wife of the appellant. If that be so, it was improbable that the appellant would have gone from his village Haider to the other village Miyan Khedi of the deceased and PW 1 to call them for properly setting the roof of his house as if no one else could do the job in his village itself. In the background of ill will and enmity, he could not have chosen to call the deceased and his son to his house and the deceased and his son could not have gone to the house of the appellant and that too to stay there overnight. There is no evidence on record to speak about the deceased and his son reaching the house of the appellant or their stay in that house.

(ii) PW 1 was the only eyewitness according to the prosecution. He being the son of the deceased is obviously an interested witness. His evidence ought to have been scrutinized with greater care and caution. Even otherwise, his evidence is not corroborated on material aspects by the evidence of other witnesses. According to the prosecution, PW 1 had gone to the house of Gyarasa (PW 3) on the date of the incident and returned to the house of the appellant at 11.00 p.m. but PW 3 in his evidence has stated that PW 1 left his house at the time of sunset in the evening. It may also be noted here that PW 3 did not support the prosecution case and he was treated as hostile.

(iii) PW 2 Kamla, chowkidar of the village, stated that when PW 1 and his brothers were coming to Village Haider, he met them on the way and told them that the appellant had killed the deceased and they need not go further and should return and go to the police station to lodge the complaint. PW 2 has stated that he was told by PW 9 Ghuman Singh about the appellant killing the deceased but PW 9 Ghuman Singh does not support the case of the prosecution and the statement of PW 2. He too was treated as hostile.

(iv) The axe alleged to have been used in the commission of the offence, said to have been recovered at the instance of the appellant, was not produced before the court and there was no occasion for the doctor to confirm whether injuries of the nature found on the deceased could be caused by such an axe.

(v) The conduct of PW 1, the only eyewitness, that too to a part of the incident is highly unnatural and improbable. When his father was being assaulted with axe on the neck and other

parts of the body, he does not make a hue and cry; he does not try to rescue; the appellant has only one hand; PW 1 and his father in the ordinary course would have overpowered him and it appears doubtful whether the appellant could assault with his one hand causing so many injuries on the body of the deceased in the manner stated; PW 1 does not try to take the help of the people in Village Haider around the house of the appellant; he ran to his village Miyan Khedi and thereafter goes back with his brothers to Haider and returns to his village again after PW 2 Kamla told them about the murder of their father. There was delay in lodging the complaint also. These factors would render the very presence claimed of PW 1 at the place and time of occurrence itself doubtful and incredible.

8. In the light of what we have stated above, we find it difficult to agree with the High Court as to how deposition of PW 1 Puran Singh inspires confidence. As is evident from the above para, the High Court instead of giving benefit of doubt to the appellant, placed the burden on the defence and found that there was absence of plausible defence and explanation by the appellant. The case of the prosecution should rest on its strength, not on the absence of explanation or plausible defence by the accused."

Relying upon the same, Learned Counsel submitted that although there was loophole on the part of the appellants to dispute the age of the victims for that the prosecution cannot shift the burden to the defence stating that there was no cross-examination in this regard from their side.

18. Learned Counsel also referred another citation of the Hon'ble Supreme Court of India reported in **(2005) 9 SCC 769** in **State of Punjab and Parveen Kumar** wherein in Para No.10 Hon'ble the Apex Court observed as under:-

"10. While appreciating the credibility of the evidence produced before the court, the court must view the evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying

declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in *Thurukanni Pompiah v. State of Mysore* [AIR 1965 SC 939] and *Khushal Rao v. State of Bombay* [1958 SCR 552].

Referring the same, Learned Counsel has submitted that since in this case there are two sets of evidence in such a situation the benefit should be given in favour of the appellants.

19. Some more other judgments also relied upon by the Learned Counsel for the appellants that mere silence during examination under Section 313 of Cr.P.C. by the appellants cannot be a sole ground for conviction. In this regard, Learned Counsel relied upon one citation of the Hon'ble High Court of Calcutta in **CRA 256 of 2007** in **Prasanta Biswas Vs. The State of West Bengal** wherein in Para No.17 the High Court of Calcutta observed as under:-

"17. We are also unable to accept the contention of the prosecution which has been accepted by the learned Trial Judge that the accused in his statement under Section 313 of the Criminal Procedure Code was obliged to say where he was on the night of 4 November, 2002 or the morning of 5 November, 2002. Under the criminal jurisprudence in this country, an accused has the right to remain silent and such silence cannot be held to be admission of any charge brought against him. An accused is presumed innocent until proved guilty. The burden of proving him guilty is on the prosecution. The accused need not say anything at all. We may note that in this regard protections of

diverse nature have been granted to an accused under Article 20(3) of the Constitution of India and Sections 132 and 138 of the Indian Evidence Act, 1872. In the present case, the accused did not run a case of alibi. He merely said that he was not in the house at the time of the victim's death. He need not have said that also. The onus was solely and wholly on the prosecution to establish his presence at the scene of occurrence, at or around the time of occurrence to connect him with the murder of the victim. This the prosecution has failed to do even by way of circumstantial evidence. The circumstantial evidence relied upon by the prosecution and the learned Trial Judge far from completes the chain of sequence and events so as to lead to an inescapable conclusion that it was only the accused and no one else who could have committed the crime."

In addition to that, some other citations were referred but in my considered view those are not relevant for the decision of this case.

20. However, after perusal of the entire evidence on record of the prosecution and after hearing detailed argument of both the sides it appears that the appellants before the Learned Trial Court could not project any defence case to disbelieve the prosecution story. Furthermore, it has already been stated that, except the victims, no other persons were present at the place of occurrence; all other witnesses are hearsay witnesses.

21. Admittedly, in this case no medical report is produced but since this is a case under Section 354A of IPC and under Section 8 of the POCSO Act. So, in proving those charges medical evidence is not required to be proved by the prosecution. However, considering the materials on record, it appears that it was the duty of the prosecution to prove atleast

any document of the school to substantiate the age of the victims or the prosecution could produce the birth certificate of the victims to substantiate the prosecution allegation. But surprisingly, there was no effort in this regard from the side of the prosecution. It is the settled position of law that in a prosecution under the POCSO Act where the age of the victim is a foundational fact so by mere adducing oral evidence it would be risky to sustain conviction unless corroborated by reliable documentary evidence. In the given case since the parents of the victims stated their age as 16 years and the victims also stated their age as 16 years in course of their deposition and as it has already been stated that the specific date of birth could not be given by the parents of the victims or by the victims themselves, so, in such a situation it would not be proper to render conviction upon the sole testimony of the victims in absence of documentary evidence on record where the victim girls stated that they are students. Atleast prosecution could adduce admission register or any other connected documents to substantiate their age. Situated thus, in absence of reliable documentary evidence on record in the considered opinion of this Court the present appellants have to be acquitted on benefit of doubt from the charges levelled against them punishable under Section 8 of POCSO Act. But the prosecution has been able to prove the charge levelled against the appellants under Section 363/354A/511 of IPC.

22. In the result, the appeal is partly allowed. The judgment and order of conviction and sentence dated 05.03.2024 in connection with Case No.Special (POCSO) 03 of 2023 delivered by Learned Special Judge (POCSO), Dhalai Judicial District, Ambassa in respect of the appellants punishable under Section 363/354A/511 of IPC is hereby upheld and affirmed accordingly and the appellants are convicted under the aforesaid provisions of law. But the prosecution has failed to prove the charge beyond reasonable doubt against the appellants under Section 8 of POCSO Act, as such they are hereby acquitted on benefit of doubt from the said charge levelled against them under Section 8 of POCSO Act. As the original judgment of the Learned Trial Court remained silent in respect of the mode of suffering of sentences so it is further ordered that the sentences affirmed by this Court shall run consecutively.

With this observation, this appeal stands disposed of.

The convict appellants are asked to surrender before the Learned Trial Court below on or before **08.08.2025** to serve out the sentence.

Send down the LCR along with a copy of this judgment/order immediately.

Also supply a copy of this judgment/order to the Learned Counsel for the appellants for information and compliance.

Pending applications, if any, stands disposed of.

JUDGE



Amrita

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