

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.47 OF 2024**

Sri Rajib Deb and anr.

..... **Appellant(s)**

Versus

The State of Tripura.

.....**Respondent(s)**

For the Appellant(s) : Mr. P.K. Biswas, Sr. Advocate.
Mr. R. Nath, Advocate.
Mr. C. Mog, Advocate.
Mr. P. Biswas, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.
Mr. R. Saha, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 15.05.2025.

Whether fit for reporting : YES/NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

This present appeal has been filed under Section 374 of Cr.P.C against the Judgment dated 29.06.2024 passed by the learned Special Judge, (POCSO), Bishalgarh, Sepahijala, in Case No. Special (POCSO) 08 of 2016, convicting the appellants under Sections 455, 506, and 34 of IPC and also under Section 8 of the POCSO Act, while acquitting the appellants from the charge under Section 323 of IPC. The appellants were

sentenced to suffer rigorous imprisonment (RI) for 5 years and to pay a fine of Rs. 10,000/-, in default of payment to suffer further RI for 1 year for the offence punishable under Section 455 of IPC read with Section 34 of IPC. They were further sentenced to suffer RI for 5 years and to pay a fine of Rs. 10,000/-, in default to suffer further RI for one year for the offence punishable under Section 8 of the POCSO Act, 2012, and also sentenced to suffer RI for 2 years and to pay a fine of Rs. 5,000/-, in default to suffer further RI for 6 months for the offence punishable under Section 506 of IPC read with Section 34 of IPC.

2. One Sri Uttam Debnath lodged a written complaint with the Officer-in-Charge of Bishramganj Police Station on 03.08.2016 at about 22:19 hours, stating that on 29.07.2016, in the afternoon at about 4:30 PM, his minor daughter who was a student of Class 7 of Charilam Higher Secondary School, returned home after school. While she was having lunch alone in the house, two persons, namely Dipan Deb and Rajib Deb, who were hiding under the cot, suddenly came out, pressed her mouth, and assaulted her. They also tried to pull her dress. During the assault, their faces were covered with black cloth, but in the course of the scuffle, the cloth accidentally got removed, allowing her to recognize the accused persons, who

then fled from the scene. While fleeing, they threatened her, saying that if she disclosed the incident to anyone, they would kill her family members.

Thereafter, hearing the hue and cry, adjacent residents, namely Subal Debnath (P.W.-6) and Smt. Jyotsna Debnath (P.W.-5), arrived at the house, by which time the accused had already fled. The incident was brought to the notice of the elderly persons of the village, resulting in a delay in lodging the FIR. On the basis of the said complaint, the OC of Bishramganj PS registered Bishramganj PS Case No. 27 of 2016 under Sections 448, 323, 354, 506, and 34 of IPC and under Section 12 of the POCSO Act, 2012. Upon receipt of the complaint, police took up the investigation, filed a charge sheet, charges were framed, and the trial commenced as the appellants pleaded not guilty. After hearing arguments, the learned Court below passed the Judgment dated 29.06.2024 convicting the appellants under Sections 455, 506, and 34 of IPC and under Section 8 of the POCSO Act, and sentencing them as earlier mentioned.

3. Being aggrieved by the said Judgment, the appellants herein preferred this appeal and prayed before this Court to set aside the impugned judgment and allow this appeal.

4. Heard Mr. P.K. Biswas, learned Senior Counsel, assisted by Mr. R. Nath, learned counsel appearing for the appellants, as well as Mr. R. Datta, learned P.P., along with Mr. R. Saha, learned Addl. P.P., appearing for the respondent.

5. Mr. P.K. Biswas, learned Senior Counsel appearing for the appellants, has contended that the prosecution's case relies on the testimony of the victim (P.W.-3), who is the only eyewitness to the alleged incident. According to her deposition, the accused persons emerged from under the cot, slapped her, and a scuffle ensued during which some physical contact occurred. However, Mr. Biswas, learned Sr. counsel submits that such contact, if any, arose out of the struggle and does not indicate any sexual intent, which is a necessary element to establish an offence under Section 8 of the POCSO Act. It was further argued that the prosecution failed to prove the element of sexual intent. The learned counsel emphasized that the victim did not specifically state which part of her body was touched or how the alleged act amounted to sexual assault. The absence of such detail, especially when the allegation stems from a scuffle, raises reasonable doubt about the true nature of the contact. Additionally, Mr. Biswas, learned Sr. counsel pointed out that the statements of P.W.-5 and P.W.-6, who were allegedly the first

persons to arrive at the scene do not inspire confidence. Notably, the victim and her parents did not immediately reveal the identity of the accused persons to them, even though the accused were known to the victim and their identities were allegedly uncovered during the incident itself. This delayed disclosure casts serious doubt on the reliability of the identification and raises questions about the credibility of the prosecution's narrative. In view of the above, learned Senior Counsel submitted that the prosecution has failed to prove the charges beyond reasonable doubt, and the appellants are entitled to the benefit of the doubt and acquittal.

6. On the other hand, learned Addl. P.P., appearing for the State-respondent, vehemently opposed the submission of the learned Senior Counsel for the appellants and urged this Court to uphold the impugned judgment, as the same is just and proper.

7. Heard and perused the evidence on record.

8. Upon careful appreciation of the evidence on record, it appears that the prosecution case mainly rests on the testimony of P.W.-3, the victim. It is undisputed that she is the sole eyewitness to the alleged incident. Her deposition reveals that the accused persons allegedly came out from under the cot, slapped her, and there was a scuffle during which they allegedly

touched her body. However, the nature of such "*touching*" has not been specified with clarity. The victim did not categorically state that the accused touched her with sexual intent. Moreover, no specific body part was identified as being inappropriately touched. In a scuffle, incidental or accidental contact may happen, but to sustain a conviction under Section 8 of the POCSO Act, the prosecution must prove that such contact was made with clear sexual intent, which is absent in this case.

9. Further, there is inconsistency in the prosecution's version regarding the identity of the accused. The victim allegedly identified the accused only after the black cloth covering their faces got removed during the scuffle. However, no immediate disclosure of their names was made to the neighbours (P.W.-5 and P.W.-6), which casts doubt on the veracity of the identification.

10. Given the lack of corroborative evidence, absence of clear sexual intent, and benefit of doubt arising from inconsistencies and omissions, this Court is of the considered view that the prosecution has failed to establish the charges beyond reasonable doubt.

11. Accordingly, this present appeal stands allowed and the impugned Judgment dated 29.06.2024 is set aside and the appellants are directed to be released forthwith, if not required in any other case.

12. As a sequel, stay granted, if any, stands vacated. Pending application(s), if any, also stand closed.

JUDGE



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