

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.70 of 2024

Sri Uttam Saha,
Son of Late Gustha Saha,
Resident of village- Dhakya Para,
P.S. Birganj, District- Gomati, Tripura.

..... Appellant(s).

Versus

The State Of Tripura

.....Respondent(s).

For Appellant(s)	:	Mr. P. Majumder, Legal-Aid-Counsel.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
Date of Hearing & Judgment	:	19th March, 2025.
Whether fit for reporting	:	NO.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. P. Majumder, learned Legal Aid Counsel appearing for the appellant and Mr. Rajib Saha, learned Addl. P.P. appearing for the respondent.

[2] The appeal arises from the judgment dated 12.12.2023, passed by the Learned Special Judge (POCSO), Gomati District, Udaipur in Case No. Special 15 of 2022(POCSO), whereby the appellant was convicted under Section 8 of the Protection of Children from Sexual Offences Act (for short, *POCSO Act*) along with Section 354 of the Indian Penal Code (for short, *IPC*), however, he was only sentenced under Section 8 of the POCSO Act to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/- and in default to pay fine to suffer further rigorous imprisonment for one month.

[3] The gravamen in the FIR lodged by the mother of the victim (PW-1), was that on 08.11.2022, the appellant, who was working in the

house of one, Biswajit Sarkar, at around 9.30 a.m. proposed the victim aged about 12 years, to have chips and also gave certain ill suggestions too. At around 4.30 p.m. on the same day, getting her alone at the northern bank of Fatik Sagar, the accused again gave certain ill proposals and also put his hand on her breast. Later on that night at around 10 p.m., the matter was informed to her by her daughter. On the following day, the appellant was detained in an intoxicated condition by the locals and was interrogated about the said allegations but he could not give proper reply. Then the FIR was lodged on 09.11.2022, at around 16.15 hours at Birganj Police Station and the police authority registered the same as Birganj PS Case No. 63 of 2022 under Section 354 of the IPC and Section 8 of the POCSO Act which ultimately led to the filing of chargesheet by the investigating officer under above said provisions of law.

[4] Learned Special Judge framed the charges under above said two provisions, to which the appellant denied the allegations. The prosecution, thereafter, examined total 8 witnesses, and ultimately, the verdict came in the form of conviction as indicated above.

[5] Mr. Majumder, learned Legal Aid Counsel, firstly submits that the requisite intention of the appellant to commit the crime as envisaged in Section 7 of the POCSO Act was not proved. Secondly, the age of the victim was also not proved satisfactorily into evidence to attract any provision of the POCSO Act. According to him, PW-2, the medical officer who proved the birth certificate of the victim did not identify the signature of the issuing authority of that certificate. Furthermore, such birth certificate was issued based on the information received from the concerned hospital authority but the record of hospital authority was also not produced. Learned Legal Aid Counsel further

submits that there has been exaggeration in the evidence of both the victim and her mother. The mother also did not give consent to go for medical examination of the victim which creates further doubt in the veracity of the case. Learned Legal Aid Counsel also tries to show certain improvement of the victim made in the witness box with reference to her previous statement recorded under Section 164 Cr.P.C to the effect that in the previous statement, she stated that she was embraced from the back side, whereas, before the Court, she stated that the appellant had touched her breast which impliedly means, such touch was from the front side. Last point as raised by learned Legal Aid Counsel is that there was also unexplained delay in lodging the FIR.

[6] Mr. Saha, learned Addl. P.P., submits that the evidence of PW-1 and PW-3 are very much cogent, trustworthy and reliable and therefore, the learned Trial Court committed no error in convicting the appellant in this case. Moreover, there was no explanation from the side of appellant during his examination under Section 313 Cr.P.C as to why he was booked in this case, and such circumstances goes against the appellant himself. Learned Addl. P.P. also submits that it is settled law that conviction can be maintained based on the sole testimony of the victim. Learned Addl. P.P. finally prays for upholding the impugned judgment.

[7] This Court has gone through the record meticulously and has considered the rival submissions of both parties. As indicated above, the key witnesses in the case are the victim (PW-3) and her mother (PW-1). In her evidence, the victim (PW-3) stated that on 08.11.2022, the appellant demanded drinking water from her when she was sitting in a temple of Shani Dev near her house. After she brought the water from her house for him, he informed her that he would give money to females

to sleep with him. He also offered chips and chocolate to her. Thereafter, she returned to her house. Later, when she went to bring her goats, the appellant met her again and asked her to kiss him and also touched her breast. Thereafter, she returned to her home and informed the matter to her mother at night while going to sleep. In her cross-examination, only one minor contradiction was taken with reference to her previous statement made before the investigating officer that in her previous statement she mentioned that one Dadu demanded a glass of water without mentioning the specific name of the appellant. However, such contradiction was not with reference to the relevant episode of the alleged incident occurred later on. In her cross-examination, she also stated that there were 20 to 25 numbers of houses near the said temple. However, non-examination of neighbouring people from the above said houses will not affect the prosecution version unless the victim is found to be not trustworthy and reliable.

[8] Learned Legal Aid Counsel though refers to the statement of the victim recorded under Section 164 Cr.P.C that she was embraced from the back side by the appellant. However, said statement was not confronted to her at the time of her cross-examination. Moreso, even if same also be confronted that would only be a minor contradiction requiring no cognizance thereof.

[9] The mother of the victim (PW-1) similarly stated in her evidence that on 08.11.2022, the appellant met her daughter near Shani Temple at around 9.30 a.m. in the morning and wanted to drink water and the victim also offered the same to him and after that the appellant told the victim that he would give her potato chips and then started telling her about obscene matters. He even told her that his wife had expired about 10 years ago and at present some widowed women

would visit him and would spend night with him in exchange of money. She further stated that on the same day, at around 4.30 p.m., in the afternoon she sent the victim to search for her domestic goats and when the victim went at the Northern side of Fatik Sagar, near Sagarika Guest House for that purpose, the appellant started misbehaving with her as she was alone and told her that when she would get married, her husband would kiss her on different portion of her person and ultimately placed his hand on her breast. The said matter was informed by the victim to her at around 10 p.m./10.30 p.m. in the night. She also deposed that on the following day, when the appellant came to the house of said Biswajit Sarkar, where he would work as a mason, immediately the matter was informed to the local residents and when he was confronted with such allegations, he denied the same. Thereafter, she approached the Birganj Police Authority. In her cross-examination, she admitted that she had denied her consent for medical examination of the victim as she did not find any mark on her body. In her cross-examination, she also admitted that there were more than 100 numbers of houses in her locality but at only at the time of worship on the special days, people would visit the said Shani Temple, otherwise people would normally not sit in the said temple for the whole day.

[10] From the above said evidences of both the PW-1 and PW-3, it appears that they have corroborated with each other on material points, except little bit of divulging further facts by the mother about offering of potato chips etc. to the victim by the appellant which the victim did not state and that mother stated that the appellant had told the victim that when she would marry, her husband would kiss her on different parts of her body, rather victim stated that the appellant asked her to kiss him. However, such exaggeration or contradictions do not

affect the veracity of both the witnesses; so far the allegation of touching her breast is concerned.

[11] There is no allegation of any sort of causing physical injuries on the victim by the appellant. Therefore, the medical examination of the victim was also not necessary and even if consent for such medical examination was not there, no inference should be drawn. PW-5, Shri Shib Sankar Das and PW-6, Shri Amar Debnath, who are the co-villagers of the victim also stated that on 09.11.2022, the mother of the victim informed them that the appellant had done some misdeeds with the victim including touching of her body. None of the above said witnesses could be discredited in their cross-examination.

[12] In next question regarding admissibility of birth certificate of the victim as raised by learned Legal Aid Counsel is concerned, PW-2, the medical officer, namely, Dr. Pradipta Narayan Chakraborty proved said birth certificate, stating that he verified the Registrar of the issuance of birth certificate and found the same to be correct. Even as per the provision of Section 17(2) of the Registration of Births and Deaths Act, 1969, any such certificate issued by the authority is admissible evidence for proving the birth or death of any person. Therefore, on that ground also such challenge as to the birth certificate is not tenable. Learned Legal Aid Counsel refers to a decision of the Hon'ble Supreme Court rendered in the case of **Alamelu and Another v. State Represented by Inspector of Police, (2011) 2 SCC 385, (relevant paragraph nos. 40 and 42)** wherein the Apex Court dealt with a transfer certificate issued by a government school with observation that admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. However, present

case is distinguishable from that case under reference on facts inasmuch as birth certificate was proved in the instant case.

[13] Learned Legal Aid Counsel also referred the provision of Section 24 of the POCSO Act and submits that the victim was examined in the police station by the investigating officer in gross violation of Section 24 of the said Act which gives space for improvement of the true version of the alleged occurrence by the victim herself. However, from plain reading of Section 24 itself, it shows that this provision was made with directives that statement of the child should be recorded in her residence itself or at any place where she usually resides or at any other place of her choice. The said provision has been made by the law makers with the intention to keep the child victim in her comfort zone while giving statements to the investigating officer. Therefore, non-compliance of said provision, will not *ipso facto* render her evidence unbelievable.

[14] So far the challenge regarding criminal intention of outraging modesty or commission of sexual assault is concerned, Section 30 of the POCSO Act raises a presumption that in case of prosecution for any offence under POCSO Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state and it is for the defence to prove that the accused had no such mental state. In the instant case, the appellant could not discharge said reverse burden.

[15] The last point as raised by the learned Legal Aid Counsel was that there was certain period of delay in lodging the FIR but from the evidence, it appears that the victim had divulged the said incident in the night to her mother when she went to bed. On the following day, at

first the appellant was detained and was interrogated by locals and after that only the FIR was lodged in the afternoon. So in such a case of child abuse, few hours of delay is not significant unless it is shown that there are chances or probability of false implication of the accused for certain reasons.

[16] Considering all these aspects, it is found that the learned Trial Court rightly convicted the appellant under Section 8 of the POCSO Act and also under Section 354 of the IPC. It is submitted from the side of appellant that he is a man of 60 years and is in custody for more than two and a half years. However, as it appears that the minimum prescribed punishment was imposed upon him by the learned Trial Court. Therefore, no further interference on the matter of sentence is required.

Considering all these aspects, it is held that the appeal is devoid of any merit and accordingly it is dismissed.

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

JUDGE

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DUTTA** Digitally signed by
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