

HIGH COURT OF TRIPURA
AGARTALA

Crl. A. No.11 of 2024

Sri Karna Jhara

s/o. Lt. Matilal Jhara of Dhalabil, Subashnagar, P.O. Khowai Tea Garden, P.S. Khowai, Dist.- Khowai Tripura, Pin- 799202.

....Appellant(s)

Versus

The State of Tripura represented by Ld. PP, High Court of Tripura, Agartala.

....Respondent(s)

For Appellant(s) : Ms. Sarama Deb, Legal Aid Counsel.

For Respondent(s) : Mr. R. Saha, Addl.PP.

Date of hearing and : **22.01.2026**
Delivery of Judgment/
Order

Whether fit for reporting :

Yes	No
	✓

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Judgment and Order(Oral)

Heard Ld. Counsel of both sides.

[2] Judgment of conviction and sentence dated 07.10.2023 passed by the Special Judge (POCSO), Khowai, in case No. SPL (POCSO) 07 of 2023 whereby Ld. Special Judge convicted the appellant under Section 8 of POCSO Act, Section 341 of IPC and 323 of IPC, is under challenge in this appeal. The appellant was sentenced to suffer Rigorous Imprisonment for 3 years with fine of Rs.1,000/- under Section 8 of POCSO Act; to pay fine of Rs. 500/- under Section 341 of IPC and to pay further fine of Rs.500/- under Section 323, IPC.

[3] The gravamen of the allegations is that on 15.07.2023 at around 7.00 am at Dhalabil under P.S. Khowai, when the victim (name withheld) went to a nearby shop of her house in search of her mother,

the appellant embraced her and also pressed the breast and on her outcry she was physically assaulted by the appellant with 'lathi'. When locals arrived there, he fled away. The charges were accordingly framed under Section 8 of POCSO Act, Section 341 IPC and 323 IPC and also under Section 354 of IPC.

[4] Prosecution examined total 11 witnesses of whom the material witnesses are the victim (PW-1 herself) and PW-2, her aunt. PW-3 and PW-10 are the parents of the victim who are basically heresay witnesses. Other two neighbours, i.e. PW-5 and PW-6 were also examined by the prosecution who are also not the eye witness of the occurrence. They, simply heard about the incident from the mother of the victim. PW-4 is the scribe of the FIR. PW-7, a constable is the seizure witness of seizure of a branch of tree and the Aadhar card of the victim. PW-8 is the Recording Officer who registered the FIR. PW-9, Dr. Anisha Debbarma is the Medical Officer who examined the victim after the alleged incident. PW-11 is the Investigating Officer who laid the charge sheet against the appellant under Section 8 of POCSO Act with Section 341 IPC and 323 IPC and also under Section 354 IPC.

[5] On appreciation of the evidences of the witnesses in totality, Ld. Trial Court finally convicted the appellant as discussed above.

[6] Ld. Legal Aid Counsel Ms. Sarama Deb, strongly argues that though the appellant was convicted under Section 8 of the POCSO Act, but, age of the victim was not proved satisfactorily before the Court and only one Aadhar card was submitted into the evidence by the prosecution which itself does not reflect the date of birth of the victim.

[7] Ld. Counsel, Ms. Deb also contends that somewhere some witnesses have stated the use of a stick by the appellant while assaulting the victim, whereas some others have stated about the use of a branch of tree and therefore, there are serious discrepancy and moreover, in the seizure item also the signature of the witnesses were

not taken. Moreover, there is also no satisfactory evidence as to where from the said branch of tree was seized.

[8] Ld. Counsel also further submits that according to PW-3 i.e the mother of the victim, she learnt about the incident from PW.2, whereas PW-2 has never claimed that she had stated those facts to the mother of the victim. Considering all these aspects, Ld. Counsel Ms. Deb submits that the impugned judgment suffers from perversity and accordingly, same may be set aside.

[9] Ld. Addl. PP, Mr. R. Saha on the other hand submits that even if prosecution has not proved any other document except the Aadhar card of the victim, but nowhere the date of birth of the victim was challenged from the side of defence and therefore, they are barred from raising any challenge regarding the minority of the victim. Ld. Addl. PP also submits that moreover, such silence of the accused may be treated as his admission regarding the minority of the victim. Ld. Addl. PP also submits that in the seizure list (Exhibit-1), it was specifically mentioned that same was seized from Dhalabil Subhasnagar Colony, Kargil Tilla of Khowai and therefore, the contention of the appellant that place of seizure was not mentioned in the seizure list is not correct.

[10] This Court has considered the submissions of both sides and also has gone through the evidences, as surfaced in the record.

[11] This Court is not in agreement with the submission of Ld. Addl. PP that age of the victim was satisfactorily proved. It is always incumbent upon the prosecution under Section 103 of the Indian Evidence Act to prove the facts which they assert. When it is the specific case that at the time of alleged incident the victim was aged about 15 years, burden lies on them to prove said fact satisfactorily. The Aadhar card as produced from the side of the prosecution does not even mention the date of birth of the victim, only year of birth of the victim is mentioned. There is no other evidence. The parents of the victim are also silent regarding date of birth of the victim in their evidence. Therefore, there is no satisfactory evidence laid by the prosecution in the present case to prove the age of the victim on the

date of incident. Thus, the findings of Ld. Trial Court holding the appellant guilty under Section 8 of PCSO Act cannot sustain.

[12] On consideration of the evidence of the victim, it appears that she has categorically stated that when she went to the shop of one Bhutto of their village in search of her mother, suddenly the appellant embraced her from behind and touched her breast. She raised alarm and thereafter, on her protest the appellant beat her and at that time her aunt PW-2 was also present there. She could not be shaken in her cross examination, rather, it was confirmed by the defence that at the time incident, on hearing her hue and cry the local people rushed to the spot and seeing them the appellant fled away. Therefore, in other way, the presence of the appellant in the scene of crime is also established.

[13] PW-2, the aunt of the victim who is another relevant witness, stated that on the said date of incident in the morning, after hearing the outcry of the victim, she came out from her house and found the appellant was touching her breast and further found that the appellant was assaulting her with a stick. Mentioning of stick in place of branch of tree is a very minor discrepancy which is ignorable. So far as her part of evidence that hearing the outcry of the victim, she first came out from her house and simultaneously she saw the appellant to embrace the victim is concerned, said part of evidence does not inspire much confidence, for, when, after the incident of embracing occurred, then only the victim, according to her, raised the alarm and therefore, after hearing such alarm, when she came out from her house, there was no scope for her to see the said incident of embracing. However, her presence, thereafter, in the scene of crime is corroborated by the victim where she found the appellant physically assaulting the victim. Just because one portion of her evidence is not believable, her entire testimony cannot be thrown out. Above all, the fact of physical assault is also further corroborated by the evidence of PW-9, the Medical Officer and her injury report put as Exhibit 5, wherein the Medical Officer found five numbers of injuries like swelling, abrasion, tenderness etc. which were simple in nature.

[14] The evidence of the victim, as already discussed above, appears to be very consistent and reliable. Therefore, on her sole testimony also, conviction can be sustained.

[15] Though the conviction under Section 8 of POCSO Act is liable to be set aside, but charge under Section 354 IPC is found to be proved against the convict. But Ld. Special Judge despite framing of charge under Section 354 IPC did not return any finding on it. Therefore, without there being an appeal from the side of state on that point, he cannot now be convicted under Section 354 of IPC.

[16] Situated thus, the conviction under Section 8 of the POCSO Act is set aside but the conviction under Section 323 and 341 of IPC and sentences passed thereon are affirmed.

[17] The appeal is accordingly disposed of.

Return the LC Record with copy of this judgment.

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

JUDGE