IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 05 of 2018 (Arising out of G.R. Case No.82/2018) U/S 12 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 21.03.2018

State of Assam

- Vs -

Nasiruddin @ Islam.....Accused.

Date of Recording Evidence on – 06.07.2018, 13.08.2018,

30.10.2018 & 26.11.2018

Date of Hearing Argument on – 16.05.2019 Date of Delivering the Judgment on – 22.05.2019

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mrs. F. Rahman, Ld Advocates.

JUDGMENT

1. The brief fact, of the prosecution case, is that on 05.01.2018, one Amar Nath Roy lodged an ejahar in Barpeta Road police station alleging inter-alia that accused person named in the FIR allegedly disturbing the niece of the informant (herein after referred her as (x)), who was reading in Class-X of Barpeta Road High School since long, and on 05.01.2018 at about 4 pm while she was proceeding to tuition she was stopped by accused on her way near Siva temple, Ward No.10 and hold her hand by force, tried to take her photograph and offered his love to her. Hence the case.

- 2. Following the information as above, Barpeta Road police station registered a case being Barpeta Road PS case No.15/18 u/s 341/354(D)/506 IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012 and took up investigation.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses including the victim and sent her to court for recording her statement before Magistrate u/s 164 Cr.P.C. Also seized her birth certificate vide seizure list M.R. No.11/18 (Ext.3), drew sketch map and finally on completion of investigation laid the charge sheet against accused u/s 341/354(D)/506 IPC and Section 12 of POCSO Act, 2012 with a view to stand trial.
- 4. During the course of time, the then Special Judge, Barpeta took cognizance of the offences and issued process against the accused. On his appearance, the then learned Special Judge vide order dated 21.03.2018 after hearing the learned counsels appearing for both sides and perusing the materials available on record, having found a primafacie materials framed charge u/s 12 of POCSO Act, 2012. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution, in order to substantiate the charge examined as many as 6 witnesses namely- Amar Nath Roy as PW-1, the victim (X) as PW-2, Khudiram Roy as PW-3, Joyram Roy as PW-4, Dipak Roy as PW-5 and Kandarpa Talukdar as PW-6, who is the investigating officer.
- 6. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. in which accused has however, denied the prosecution evidence as false and misleading. However, on being asked accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

7. Now point for determination ;-

1. Whether on 05.01.2018 at about 4 pm and prior thereto accused committed sexual harassment to the victim girl (herein after referred her as (X)) as alleged ?

8. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the arduous contention of the learned lawyers appearing for both sides and also carefully scanned the evidence available on record.

9. Before making effective discussion on the evidence on record, it would be useful to refer the definition of the offence of sexual harassment and punishment prescribed for the offence.

<u>"Section 11 Sexual harassment.-</u> A person is said to commit sexual harassment upon a child when such person with sexual intent-

- (I) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child;
- (II) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (III) shows any object to a child in any form or media for pornographic purposes; or
- (IV) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (V) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (VI) entices a child for pornographic purposes or gives gratification thereof".

Explanation- Any question which involves "sexual intent" shall be a question of fact.

"<u>Section 12 Punishment for sexual harassment.-</u> Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine".

- 10. On perusal of the definition of offence of sexual harassment as define u/s 11 of POCSO Act it appears that utterance of any word or making a sound or any gesture or exhibition of any object or part of body with the intention that such word or sound is heard, or such gesture or object or part of body shall be seen by the child; or repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or touches any part of the body of the child or the involvement of the child in sexual act etc constitute the offence of sexual harassment.
- 11. In the instant case, on perusal of the evidence of PW-1 Amar Nath Roy, who is the informant it appears that accused repeatedly and constantly follows or watches

or contacts the victim girl whenever she proceeded to her school and back home. Accused also hold her hand, took her photograph in mobile phone and also spelt/ utters bad languages and also threatened to take the girl away by force on 05.01.2018 from near Manaspur Shiva temple. Based on all these facts, he lodged the FIR Ext.1 and Ext.1(1) is his signature identified by him. He also stated that during investigation police also brought her before Magistrate for recording her statement and also seized her school certificate. The girl was also sent for medical examination.

- 12. The victim girl in her deposition as PW-2 also stated that informant is her uncle and she knows the accused who has a selling point of chicken nearby her house. Whenever, she went to school or tuition accused followed her. In this fashion accused has been disturbing her for over a year. According to her, accused also hold her hand and took her photograph with his mobile phone and threatened her not to disclose it to any one and also threatened to throw acid on her. On the day of incident accused again followed her and hold her hand and tried to take her by force from near Manaspur Siva temple. She disclosed all these fact to her uncle, who is the informant of this case. She also deposed that during investigation police produced her before Magistrate and recorded her statement. Ext.2 is her statement and Ext.2(1) and 2(2) are her signature.
- 13. The victim girl was cross examined by defence but failed to discredit her in material particulars as she consistently stated that accused followed her when she went to school and back home and this process was going on over a year. She told this fact to her uncle, who persuaded accused not to do so but of no avail. It is also seen that in her cross examination the victim was put some unnecessary and irrelevant questions which has no material barring with the case.
- 14. PW-3 is Khudiram Roy, who deposed that he knows the informant and the victim girl as well as accused person. He deposed that the informant told him about two month back that accused has been disturbing his niece for long whenever she went to school and tuition. Then he also persuaded accused not to do so, but he told him that he wanted to love her but the girl do not love him as she is only 14/15 years old girl. After two months of this, the informant again told him over phone that accused pulled the victim girl on the road by holding her hand. Having heard about this incident the nearby people plan to teach a lesson to accused but he restrained them and informed the police who took the victim girl.

- 15. In his cross examination the learned defence counsel again put irrelevant questions which has no material barring with the facts of the case.
- 16. PW-4 Joyram Roy, who also deposed that he knows the informant, victim as well as accused who are his neighbor. The incident occurred about 4/5 months back. The informant told him that his niece was regularly disturbed by accused whenever she went to school and tuition and offered his love to the victim girl but she do not love him. One day he along with informant went to the shop of accused and asked him why he disturbed the girl then for about two months accused did not disturb her. But again accused pulled the girl on the road by holding her hand then the case was filed.
- 17. In his cross examination he deposed that informant told him that accused disturbed the girl for about two months back prior to police arrested him. According to him, the incident was known to all the persons in the locality.
- 18. PW-5 Dipak Roy stated that he knows the informant, victim as well as the accused. He corroborated the fact that accused Nasiruddin regularly harass the victim girl and forcefully tried to pull her away from near the Shiva temple and having seen this, nearby people came forward but in the meantime, accused fled away. Then on being enquired, the girl told them that she was frequently disturbed by accused whenever she went to school and tuition classes.
- 19. In his cross examination he stated that he came to the spot after the incident and denied that he did not state before police that accused disturbed the girl frequently while she was going to tuition and returned home.
- 20. PW-6 Kandarpa Talukdar is the investigating officer, who deposed that having received the FIR from Amar Nath Roy a case being Barpeta Road P.S. case No.15/18 u/s 341/354 (D)/506 IPC R/W section 12 of POCSO Act was registered and he was entrusted to investigate the case. Accordingly, he visited the place of occurrence, drew sketch map, and recorded the statement of the witnesses including the statement of the victim girl. He also produced the victim girl before Magistrate for recording her statement u/s 164 Cr.P.C. He also collected the birth certificate of the victim girl vide seizure list Ext.3 and Ext.4 is the said birth certificate and on completion of investigation he handed over the case diary to O/C, Barpeta Road police station. Subsequently, O/C Abhiit Kumar Baruah laid the charge sheet u/s 341/354 (D)/506 IPC R/W section 12 of POCSO Act. Ext.5 is the charge sheet and Ext.5 (1) is the signature of O/C Abhijit Kumar Baruah known to him. Ext.6 is the

sketch map and Ext.6 (1) is his signature.

- 21. During his cross examination he denied the suggestion of the learned defence counsel that PW-1 did not state before him that on the way to school and tuition and back home accused followed the victim girl every day and he persuaded accused along with one Khudiram not to do so. He also denied the defence suggestion that PW-2 the victim girl also did not state before him that accused took her photograph and also threatened her of throwing acid. He also denied that PW-3 also did not state before him that accused love the victim girl but the victim girl did not like him and after two months, the informant told him over phone that accused pulled her by holding her hand and many people knows about this fact.
- 22. Now, on careful assessment of evidence available on record what crystallizes before this court is that the accused constantly and regularly disturbed the victim girl by following her on her way to school and tuition and back home. This fact has been clearly stated in the FIR (Ext.1) as well as in her statement recorded by Magistrate u/s 164 Cr.P.C. (Ext.2). In Ext.2 the victim girl categorically stated that accused Nasiruddin has been disturbing her for the last one year. He used to hold her hand, stopped her in between the road, followed her always whenever she went to school and tuition, threatened her to take photograph, force her to seat in his bike and he even threatened her to throw acid if she do not oblige him. It is further stated that she has been staying in the house of her uncle. It is also stated that when her brother went to office accused came to the house and tried to take her by force. All these facts have been clearly narrated by PW-2, the victim girl in her deposition in court as well. The evidence of the victim girl has been corroborated by the evidence of the informant (PW-1) and other prosecution witnesses. The learned defence counsel contended that there is no eye witness to the occurrence and the evidence of the witnesses are all hearsay in nature and no reliance can be placed on the evidence of such witnesses for sustaining conviction.
- 23. But, after dispassionate and careful examination of the evidence on record this court failed to appreciate the submission of the learned defence counsel because the evidence of PW-1 who is the uncle of the victim girl corroborated her statement in material particulars as he is the person with whom the girl confides her ordeal as she has been staying in his house and the victim girl in her deposition in court clearly stated that she narrated her ordeal to her uncle who then filed the case against accused. Moreover, PW-5 Dipak Roy also stated that on the day, when accused tried

to forcefully taken away the victim girl from near the Shiva Temple, he along with others went there but the accused in the meantime, fled away. Nevertheless, the victim girl narrated the story to them. The learned defence counsel by way of cross examination of the I/O tried to contradict the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 but failed to shake their credit. It is to be noted that in criminal trial exact reproduction statements given by witnesses before investigation officer is not possible in court as evidence is usually recorded in court much later in point of time. So because of human frailty, minor discrepancy here and there is bound to occur and such minor discrepancy in the evidence of the witnesses cannot be taken note of unless such discrepancy affects the merit of the case making it unworthy of credit.

- 24. It is to be noted that the offence of this nature always took place behind the public eye as accused committed such offences in opportune moments. Therefore, witnesses has the rare opportunity to see/notice such incident unless accidentally it comes to the notice of the witnesses. In such circumstances, the court must rely on the evidence of the victim girl and seek corroboration in the evidence of other prosecution witnesses if the evidence of the victim does not inspire confidence. Here in the instant case, the evidence of the victim girl is found credible and trustworthy. Admittedly the girl, at the relevant time, was 15 years old and she was reading in Class-X. She is capable to understand right and wrong. The evidence of victim girl and other witnesses shows that accused tried to pull her from near Shiva temple which fact has been clearly stated by the I/O in Ext.6 (sketch map). On perusal of the sketch map it is seen that accused tried to take her by forcer from Shiva temple which place is shown as "B" as indicated in the sketch map Ext.6.
- 25. In this context, it is to be noted that when the court is required to assess the evidence of the minor witnesses it is to be very much circumspect in evaluating it. In the instant case, the victim girl at the relevant time has been studying in Class-X. So, she possess sufficient intelligence and capability to understand and differentiate the right and wrong. She cannot be tutored to say the falsehood only to implicate the accused person. The girl being the victim, feels the pain and agony of such frequent misdemeanors on the part of accused while going to school/tuition and back home. Therefore, the fact that accused frequently disturbed her on her way to school, threatened to pull her by force, tried to

take photograph on the mobile phone and even threatened to throw acid on her, if she refused to oblige him cannot be thrown out in lighter vain as false and unworthy of credit because the victim girl is consistent in her stand in her evidence in court as well as in her statement before Magistrate u/s 164 Cr.P.C. which assures confidence in the mind of the court. Therefore, this court come to unerring conclusion that the evidence of the victim girl cannot be thrown out on the ground that she is minor and her evidence is unworthy of credit. As clearly defined in section 11 of POCSO Act, the act/acts indulged by accused clearly constitute the offence of sexual harassment as he sounded before the girl to take her away by force, offer his love to her even though she do not like him and hold her hand with a view to take her away and on her refusal he even threatened to throw acid on her. All these acts are visible, gestures on the part of accused and words uttered by him are clearly audible as accused sounded to take the girl by force. Therefore, the acts of the accused involves visible sexual intent which has great impact in the tender mind of the girl as she was not in a position to move freely on the road. She has been carrying fear in her mind all the time because of the frequent disturbance caused by accused. Therefore, the act/acts of the accused clearly fall within the periphery of the offence as defined in section 11 of the POCSO Act punishable u/s 12 of POCSO Act.

- 26. In view of the foregoing discussion and reason, this court found the accused Nasiruddin @ Islam guilty of committing the offence u/s 11 of POCSO Act punishable u/s 12 of POCSO Act. Accordingly, he is convicted.
- 27. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case, the age of the accused, the nature of the offence committed, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused.

SENTENCE HEARING

- 28. I have heard the accused person on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused person hails from very poor strata of society and survives by selling chicken. He is very young and unmarried. So, in the event he is put behind bar his innocent family members would suffer a lot. Hence, accused pleaded clemency.
- 29. Heaving considered all the attending facts and circumstances of the case and

the punishment prescribed in section 12 of POCSO Act, 2012 accused is convicted and sentenced to undergo simple imprisonment for a term of 1 (one) year and fine of Rs.500/- (five hundred) I/d Simple Imprisonment for 1(one) month.

- 30. The period of detention, if any, undergone by accused during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.
- 31. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 32. Let copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 33. Let the case record be consigned to record room after completing the formalities.
- 34. Given under my hand and seal of this Court on this 22nd day of May, 2019.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta

APPENDIX

1. The prosecution has examined the following 6 nos. of witnesses :-

PW-1 = is Amar Nath Roy, the informant.

PW-2 = is victim(X).

PW-3 = is Khudiram Roy.

PW-4 = is Joyram Roy.

PW-5 = is Dipak Roy.

PW-6 = is Kandarpa Talukdar.

2. The prosecution has exhibited following document:

Ext.1 = is ejahar.

Ext. = 1(1) = is the signatures of informant.

Ext.2 = is the statement of victim u/s 164 Cr.P.C.

Ext.2(1) & 2(2) = are the signatures of victim (X).

Ext.3-= is the seizure list.

Ext.3(1)= is the signature of I/O.

Ext.4 = is the birth certificate of victim.

Ext.5= is the charge sheet.

Ext.5(1)= is the signature of S.I. Abhijit Kumar Baruah.

Ext.6= is the sketch map.

Ext.6(1)= is the signature of Kandarpa Talukdar

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.