IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 03 OF 2018

Under Section 8/12 of P.O.C.S.O. Act,2012

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.
-versusMrinal Kanti Ojah Accused.

APPEARANCE

For the Prosecution : Mr. Lalit Nath, learned P.P.

For the accused : Mr. R.N. Das, learned Advocate.

Evidence recorded on : 19.06.2018,

Argument heard on : 19.06.2018,

Judgment delivered on : 19.06.2018.

I U D G M E N T

1. The prosecution case, in brief, is that on 09.11.2017 one Manoj Boro lodged an FIR alleging that his daughter Dipashree Boro aged 13 years was a student of Kasturva Gandhi Balika Vidalaya, Pakabetbari by staying in the hostel of the school. On that day at about 01:30 noon the victim over phone informed him that for last one week accused Mrinal Kanti Ojah, Chowkidar of the hostel had been giving some illicit signal to

her and on 05.11.2017 at about 8:30 PM he touched her chest.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against accused Mrinal Kanti Ojah under section 8/12 of POCSO Act.
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charges were framed against accused Mrinal Kanti Ojah under section 8/12 of POCSO Act. Charges were read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 4(four) witnesses. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Points for determination**:-

Whether on 05.11.2017 at about 8.30 P.M. at Paka Betbari, within the jurisdiction of Barpeta P.S., District Barpeta, the accused person---

- I) committed sexual assault on Dipashree Boro, aged about 13 years, who is daughter of the informant Manoj Boro?
- ii) had been committed sexual harassment upon Dipashree Boro, aged about 13 years, who is daughter of the informant Manoj Boro?

Discussion, decision and reasons thereof

6. According to the FIR, the accused person touched the chest of the victim on 05.11.2017 and prior to that for about one week he was giving some illicit signals to her. The informant came to know about the occurrence while the victim informed him on 09.11.2017 over phone. At the time of occurrence, the victim was a student of Class VIII and she was aged about 13 years. The said informant i.e the father of the victim Manoj Boro as PW1 has deposed that he was informed over phone by a teacher

of the school wherein the victim was reading that while the victim alongwith other students were playing, the accused persons prevented them. Then suddenly, the hand of the accused touched the victim. The accused was the cook of that school. The teacher further told him that he was called by the police. So he had gone to the police station. In the police station, police took his signature in blank paper. Later he came to know that by that paper a case was registered against the accused person. Police seized the birth certificate of the victim.

In cross examination, he has stated that Ext.1- the FIR was not written by him. He does not know who wrote the said FIR. He put his signature in the FIR as per direction of the police and the teacher. As the case was filed due to some misunderstanding, the village people and the school authority settled the matter. No such occurrence took place as narrated in the FIR. So, he is not willing to proceed with the case.

7. The mother of the victim Smti Rina Nath Boro as PW2 has deposed that the victim was studying at Kasturva Gandhi Balika Vidalaya, Pakabetbari by staying in the hostel of the school. The accused person is the Chowkidar of the hostel. About 8 months ago, her husband informed her that while the victim was playing in the hostel, body of the victim was touched by the accused accidently. Then her husband was called by the school authority. Police took the signature of her husband. Thereafter the school authority and villagers settled the matter.

In cross examination, she has stated that she did not see anything. She heard from her husband. No such occurrence took place as narrated in the FIR.

8. The victim Dipashree Boro as PW3 has deposed that about 8 months ago at night while she had gone for dinner, the accused was providing dinner. In the meantime, the electric lights were off. Then suddenly she dashed with the accused. She informed the matter to her friends and her friends informed the same to the hostel warden. Warden called her father and while her father came, the warden lodged the FIR

through her father. Police produced her before the Magistrate and she made the statement.

In cross examination, she has stated that the whole occurrence took place due to misunderstanding. The accused did not do any illicit act with her. Her father, by mistake, lodged the FIR. She made the statement before the Magistrate as tutored by the police. Prior to that she never visited the court. As her father lodged the FIR due to misunderstanding, the villagers settled the matter. The accused is not guilty.

- 9. On Dinesh Nath as PW4 has deposed that one day the informant called him to the police station. Police seized the birth certificate of the victim and he put his signature in the seizure list. Except this, he does not know anything.
- 10. From the above discussions of the evidences of the prosecution witnesses, it is found that the victim is the vital witness in this case. Except her no other witness saw the occurrence. But the victim herself has not supported the case of the FIR. Rather, she has stated that her father lodged the FIR due to misunderstanding. The accused person did not do any illicit act with her. He is innocent. She made the statement before the Magistrate as tutored by the police. On the night of occurrence as the electric lights were off, due to darkness she was dashed against the accused who was the cook of her hostel and he was providing dinner to them. PW1 and PW2 i.e. the father and mother of the victim respectively, have also supported the version of PW3 by saying that no such occurrence took place as narrated in the FIR. On the night of occurrence, while the victim along with her inmates were playing, the accused person prevented them and then suddenly the body of the victim was touched by the accused. The informant does not know what is written in the FIR. It was written by somebody else and he had only put his signature. Contradicting own statement of the FIR, informant in his examination-in-chief has stated that police took his signature in a blank paper and the same was

converted to an FIR. Under such circumstances, it is revealed that neither informant nor the victim are at all reliable witnesses. They have contradicted their own version. On the basis of such contradictory evidences no one can be held guilty for any offence. In this present case, I find that the prosecution has failed to bring home the guilt of the accused person.

- 11. Under the above facts and circumstances, it is clear that the accused person cannot be held guilty for any offence either under section 8 or under section 12 of POCSO Act, 2012. Therefore, the accused person is acquitted and set at liberty.
- 12. Bail bond executed by the accused person and the surety are extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 13. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.
- 14. Given under my hand and seal of this Court on this 19th day of June, 2018.

Dictated & corrected by me.

Sd/- Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta (Smti. C. R. Goswami) Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Manoj Boro, the informant,

P.W.2 = Rina Nath Boro,

P.W.3 = Dipashree Boro, the victim,

P.W.4 = Dinesh Nath.

(B) Prosecution Exhibits:

Ext.1 = FIR,

Ext.1(1) = Signature of Manoj Boro,

Ext.2 = Seizure list,

Ext.2(1) = Signature of Manoj Boro,

Ext.2(2) = Signature of Dinesh Nath,

Ext.3 = Statement of victim u/s 164 CrPC.

Ext.3(1) & 3(2) = Signatures of the victim.

- (C) **Defence witnesses**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta.