IN THE COURT OF THE SPECIAL JUDGE, SIVASAGAR

Present – Shri Biprajit Roy, AJS, Special Judge, Sivasagar,

Spl. (P) Case No. 11/2017

Under section- 8 of POCSO Act

State -Vs-Sri Sushil Kakoty

Advocate appeared:

For the State : - Mr. S. Gogoi, For the accused : - Mr. U. Chetia,

Date of evidence :- 21.11.2017,25.07.2018.21.01.2019.08.03.2019,12.04.2019,

Date of argument: - 14.05.2019, Date of judgment: - 28.05.2019,

JUDGMENT

- 1. The case of the prosecution is that the informant/victim is a minor girl aged about 11 years who lodged an FIR in the Sivasagar police station on 08.03.2017 stating that on that day at about 8.00 a.m. she went to the house of Sushil Kakoty to bring milk. The informant alleged that taking advantage of the absence of the family members, the accused forcefully took her in side the house and attempted to outrage her modesty and also pressed her private parts as a result of which she suffered pain.
- 2. The Officer-in-charge of Sivasagar P.S. received the FIR and registered Sivasagar P.S. case no. 160/2017 u/s 8 of the POCSO Act. After completion of investigation charge-sheet was submitted against the accused Sushil Kakoty u/s 8 of the POCSO Act.
- 3. On appearance of the accused copy of relevant documents were furnished to the accuse and charge u/s. 10 of POCSO Act was framed against the accused which was read over and explained to the accused to which he pleaded not guilty.
- 4. In the course of trial prosecution side examined 7 (seven) witnesses . The defence plea is of denial.

5. The accused person was examined u/s 313 Cr.P.C. He denied the allegations during examination u/s.313 Cr.P.C.

- 7. Heard argument of learned counsel of both sides.
- 8. The point for determination in this case is:
 - (I) Whether accused person committed the offence as alleged in the FIR?

Decision, Discussion and reasons:

10) The P.W.1 is the mother of the victim. She stated that on 08.03.2017 her daughter was a student of class V and she was aged about 10 years. On 08.03.2017 at about 8.30 a.m. Mamoni Hazarika sent her minor daughter/victim to bring milk. After sometimes her daughter returned weeping without bringing milk and informed her aunt Mamoni Hazarika that while she went to the house of the accused, the accused called her inside and grabbed her from the back side. The accused than kissed her cheek, touched her breast and body. She also told that the accused asked her as to whether she likes him or not. Then the victim ran way from the place. The PW-1 stated that Mamoni Hazarika informed her about the entire incident and then she asked her daughter about the incident and she also narrated in the similar manner. Then the PW-1 along with her daughter and neighbours went to the house of the accused but he was not found. After sometimes Hemi Das informed that the accused was hiding himself under the bed in the house of his son Nayan Kakoty. Then the accused was pulled out from the place. After sometimes her daughter went to the police station and lodged the FIR. Her daughter was medically examined and her statement was also recorded in the Court.

In cross-examination PW-1 admitted that she did not state before the I.O. that the accused had grabbed her daughter, that she enquired about the matter from her daughter and took her to the house of the accused after the incident. The PW-1 further stated that they used to purchase goods on credit from the shop of the accused. The PW-1 denied that while taking milk her daughter had stolen money from the house of the accused and seeing this the accused slapped her daughter and in the process the milk cane fell down. The PW-1 denied that as the accused had rebuked her daughter they concocted a false story and lodged a false FIR against the accused.

11) The P.W.2 is the minor victim. Before recording her evidence this Court tested her capacity and reasonableness to understand the questions put to her and on being

satisfied recorded the evidence. The PW-2 stated that the accused is her related grand-father. On -08.03.2017 at around 8.00 a.m. (wrongly written as 8.00 p.m.)she went to the house of the accused to bring milk. Accidentally milk spilled from her hand and for that reason the accused scolded her and also assaulted her. Then she came back home and informed her mother about the incident. The family members of the accused were not at home at the relevant time. The PW-2 stated that she lodged FIR as asked by her family members which is marked as Ext. 1wherein Ext.1(1) is her signature. She stated that she was medically examined. Her statement was recorded in the Court. Which is marked as Ext. 2 wherein Ext.2(1) is her signature.

In cross-examination PW-2 stated that the accused did not touch her inappropriately. She stated that as she spilled milk, the accused assaulted her. She also stated that the FIR was written by some other person and she did not know the contents of the FIR. She also stated that she had a cordial relationship of the accused and visit the house of the accused. She also stated that the accused had lodged a case against them which he has withdrawn.

12) The P.W.3 Barnali Das, PW-4 Hemi Das, PW-5 Mamoni Hazarika and PW-6 Axomi Hazarika are the independent witness. The PW-3 stated that she heard that a quarrel took place in between the victim and the family members of the accused. The PW-4 stated that she heard that a quarrel took place in between the accused and the victim. She also heard that the mother of the victim informed the public that the accused had committed misdeed with her minor daughter. The PW-5 in her evidence stated that the victim had informed her that the accused assaulted her physically and accordingly she informed the matter to her mother. The PW-6 stated in her evidence that after arriving home she came to know from Mamoni that the accused had assaulted the victim.

From the evidence of the independent witnesses it is clear that they do not have any personal knowledge about the incident.

13) The PW-7 is Retd. SI namely Bokul Bora who in his evidence stated that on 08.03.2017 he was posted at Sivasagar police station. On that day on the basis of the FIR lodged by the informant/victim Sivasagar PS case no. 160/17 u/s. 8 of POCSO Act was registered. During investigation he recorded the statement of the witnesses, visited the place of occurrence, prepared the sketch map, examined the victim medically and also got her statement recorded u/s. 164 of Cr.P.C. The accused was arrested and

forwarded to the Court. On completion of the investigation and upon finding incriminating materials against the accused Sushil kakoty, he submitted charge-sheet against him u/s. 8 of POCSO Act. The PW-7 exhibited the sketch map which is marked as Ext. 3 wherein Ext.3(1) is his signature. He also exhibited the medical report collected by him which is marked as Ext.4. The PW-7 exhibited the charge-sheet marked as Ext. 5 wherein Ext.5(1) is his signature.

In cross-examination the PW-7 denied that he did not record the statement of the victim girl as per section 24 of the POCSO Act. He also admitted that he did not collect the birth certificate from the school of the victim regarding his age or date of birth.

- 14) In her statement recorded u/s. 1640f Cr.P.C. which is marked as Exdt.2 the victim stated that on 08.03.2017 at around 8.00 a.m. as per her daily routine she went to the house of the accused Sushil Kakoty to fetch milk. The accused called her inside the house and caught hold of her hands and touched her inappropriately on her chest. Thereafter he pulled her cheek and kissed her. She somehow managed to escape from the place of occurrence. She stated that after returning she narrated the entire incident to at Mamoni Hazarika.
- 15) Section 10 of the POCSO Act,2012 provides for punishment for aggravated sexual assault. Section 9 of the POPCSO Act describes aggravated sexual assault. According to section 9(m) a person is said to commit aggravated sexual assault if he commits sexual assault on a child below 12 years of age.
- 16) From perusal of the materials available on record it appears that the victim of this case was aged about 11 years. In his examination u/s. 313 of Cr.P.C. the accused also admitted that on 08.03.2017 the victim was a student of class V and she was aged about 10 years. Therefore, so far as the age is concerned, there is no dispute that at the time of the alleged occurrence she was below 12 years of age.
- 17) The next point to be decided is whether the accused sexually assaulted the victim. In the course of trial the prosecution side exhibited FIR marked as Ext. 1 wherein the informant/victim narrated that she was sexually assaulted by the accused on 08.03.2017 at about 8.00 a.m. when she went to the house of the accused to bring

milk taking advantage of absence of the other family members in the house of the accused. But in her evidence the PW-2 who is the informant-cum-victim stated that she lodged ejahar (Ext.1) as asked by her family members to do so. In her cross-examination she admitted that she did not write the ejahar and she was not aware of its contents.

- 18) The prosecution side exhibited the statement recorded u/s. 164 of Cr.P.C. of the victim girl marked as Ext. 2 wherein she narrated the alleged incident before the ld. JMFC, Sivasagar.
- 19) From perusal of the Ext. 2 it appears that she was administered oath before making her statement. From perusal of the order dated 08.03.2017 passed by the ld. JMFC, Sivasagar after recording the statement of the said victim wherein it was mentioned that the victim was given sufficient time for reflection. The case record reveals that the victim was produced on 08.03.2017. This is relevant in this case in view of the fact that the said victim while adducing her evidence as PW-2 narrated a totally different story in the Court. The PW-2 victim stated in her evidence that on 08.03.2017 she went to the house of the accused at around 8.00 a.m. (wrongly written as 8.00 p.m.) to bring milk and at that time accidentally the glass of milk fell down from her hand that for reason the accused scolded her and also assaulted her. She came back home and told the incident to her mother. In her cross-examination she clearly stated that the accused did not touch her inappropriately. She further stated that as she spilled the milk, the accused assaulted her. She further stated that she has good relation with the accused.
- 20) From the evidence of the PW-2/victim it is clear that no such incident took place as alleged in the FIR. She also stated that she lodged the FIR which was written by some other person under instruction of her family members and she did not know the contents of the said FIR. On the other hand PW-1 who is the mother of the victim stated that at about 8.30 a.m. on 08.03.2017 her daughter returned back weeping and without bringing milk and on being asked she informed her aunt Mamoni Hazarika that the accused called her inside the house and kissed her cheek and also touched her breast and body. She also told that the accused asked her as to whether she likes him or not. The PW-5 Mamoni Hazarika on the other hand stated that on the date of occurrence the victim girl had gone to bring milk from the house to the accused and after returning she informed that the accused assaulted her physically and accordingly

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she informed the matter to her mother. Therefore, from the evidence of the PW-2 and PW-5 it is clear that the PW-1 in fact tried to make out a case of sexual assault against the accused and that is why the PW-2/victim stated that the ejahar was lodged on being asked by her family members.

- 21) From the discussion made above, it is clear that no such incident as alleged in the ejahar took place. It is also pertinent to mention here that the other prosecution witnesses had no personal knowledge about the incident and they heard about the quarrel in between the victim and the family members of the accused.
- 22) In view of the above the accused is held not guilty as the prosecution side has miserably failed to establish the case against the accused. The accused is acquitted and set at liberty forthwith.
- (23) The bail bond of the accused is extended for a period of 6(six) months from today.

Given under my hand and seal of this court on this 28th day of May, 2019.

Special Judge, Sivasagar

APPENDIX

1. Prosecution witnesses:

- 1 Smt. Munu Hazarika,
- 2 Smt. Bhagyashree Hazarika
- 3 Smt. Barnali Das,
- 4 Smt. Hemi Das,
- 5 Smt. Mamoni Hazarika,
- . 6 Smt. Axomi Hazarika,
 - 7 -SI. Bokul Bora,

2. Exhibits by prosecution-

Ext.1 – FIR,

Ext.2 - statement u/s. 164 of Cr.P.C of Smt. Bhagyashree Hazarika,

Ext.3 – Sketch map,

Ext.4 – Medical report,

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