IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 10 (DH)/ 2017.

U/S 8 of POCSO Act.

(G.R. Case No. 518/2015(GMK); Gogamukh P.S. Case No.115/2015 u/s 354 (B) I.P.C. read with Section-4 of POCSO Act).

The State of Assam

- Versus -

Shri Dhan Rajbonshi,

S/O Boluram Rajbonshi,

Vill. Panchmile,

P.S. Gogamukh,

Dist.- Dhemaji.

.....Accused Person

Committing Magistrate: Shri P.C. Kalita,

Chief Judicial Magistrate,

Dhemaji.

Appearance:

Shri A. Fogla, Public Prosecutor

.....For the State

Shri L. Buragohain, Advocate

......For the Accused

Dates of prosecution evidence : 06-11-2015, 22-06-2015, 18-01-2016,

19-02-2016, 31-08-2016, 30-11-2016

and 30-10-2017.

Date of argument

: 18-02-2019,

Date of Judgment

: 08-03-2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 22-06-2015 complainant- Shri Dik Bahadur Chetry lodged an ejahar with Gogamukh Police Station alleging interalia that on that day i.e. on 22-06-2015 in the morning at about 7 AM while his minor daughter -Smti 'X' (real name withheld) aged about 12 years went to the grocery shop of the accused to buy some articles, then accused-Dhan Rajbonshi forcibly pulled her into his shop and tried to commit rape on her by removing her wearing clothes. It is also stated in the ejahar that the victim somehow managed to escape from the clutch of the accused and came to her house and then she reported the matter immediately to her family members.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person u/s 354 (B) of IPC R/W Sec. 4 of the POCSO Act.
- 3. It appears from record that police submitted charge sheet against the accused u/s 354 B IPC R/W sec 4 of POCSO Act but, at the time of framing charge my predecessor passed order to the effect that there are materials against the accused u/s 354B IPC and then sent down the record to the court of magistrate but again in the court of magistrate 1st class during examination of witnesses it was revealed that the victim was aged about 12 years and there was statement of the victim that the accused physically/sexually abused her and hence the Ld. Court below committed the case to this court holding that the evidence on record attracts section 7 of POCSO Act. Accordingly on receipt of the case record and after considering the material on record charge u/s 8 of POCSO Act framed and read over and explained to the accused to which the accused pleaded not guilty. Defence adduced evidence of two Witnesses. Further it may be mention that during trial before Sessions Court prosecution tendered the evidence recorded by

the trial court and defence cross-examined the victim (PW4) and Complainant (PW1). Prosecution, in order to prove its case, examined 9 witnesses. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. It also appears from record that defence examined two DWs. However, prosecution did not further cross-examined the DWs during trial in Sessions Court.

4. Point for determination:

- (1) That you, on 22-06-2015 at about 6.30 AM with sexual intention touched breast of Smti 'X', a child and also tried to remove her pant inside your shop situated at Pachmile under Gogamukh P.S. and thereby you committed an offence punishable u/s 8 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

father of the victim. He deposed that occurrence took place inside the shop-house of the accused on 22-06-2015 at about 6/7 AM. On that day his daughter Smt. 'X' went to the shop of the accused to bring sugar and khata book. His daughter came back home weeping and told them that accused dragged her into his shop and abused her physically. When she tried to flee away, accused removed her panty. At that time he was in the field. His wife informed him about the occurrence and then he came home. On being asked his daughter told that while she went to the shop of the accused to buy sugar and khata book, he caught hold of her hand and dragged her into his shop house, touched her breasts and tried to do bad act with her. But, she somehow managed to escape from the clutch of the accused. He went to his (accused) shop and asked him about the occurrence. Then accused denied it.

Village people gathered there and they informed the matter at the police station. Police came and took the accused to the police station. He filed the case prior to examination of his daughter medically by Dopctor. Police seized the wearing clothes of the victim. Ext.1 is the eajahar and Ext.1(1) is his signature. Ext.2 is the Seizure list and Ext.2(1) is his signature. M.Ext.1 is the clothes of the victim.

In cross-examination PW1 stated that they are living for 6/7 years as neighbours. Accused's shop is near the road. Accused is a married man. He does not know whether the family of the accused live on the backside of the shop. He denied the defence suggestion that as his relation with the accused is not good so he along with other persons broke down the shop of the accused. He denied that to fit fat the grudge of a different case, he has given false evidence against the accused. In his further re-cross-examination PW1 stated that there is a shop of an old lady at a little distance of the place of occurrence. He does not know whether the said shop of the old lady was open or not. Many people of Nepali Community used to live near the place of occurrence. There was no other shop in the place of occurrence. He also denied that he has given false evidence.

She deposed that the courrence took place about 4 months ago in the morning at abut 6:30 AM. On that day her daughter Smt 'X' went to accused's shop to buy sugar and khata book. Her daughter came home weeping, and told her that accused forcibly dragged her into his shop and touched her breast and when she tried to flee away from his clutch, he put off her pant. She somehow managed to escape from accused's clutch. The girl became senseless. She informed her husband. Then her husband and villager went to accused's shop. Accused first denied the fact. Later on, police

was informed. Then Police brought the girl to the police station and police

sent her to the hospital for medical examination.

PW2 Smti Kalpana Chetry is the mother of the deceased.

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In cross-examination PW2 stated that they had good relation with the accused prior to the date of occurrence. Accused called her daughter as 'Bhanti' (sister). Accused'd family resides near his shop. Now, accused's shop remained closed. There is a gate in front of the shop.People destroyed the articles of the shop. It is visible the inside of the shop from the road. There is back door of the shop. The shop is visible from her house. The gate of the shop was closed. The accused gave articles to the victim girl by opening the window of the shop. The victim girl became senseless for half an hour after the occurrence. Villagers gathered at the place of occurrence within half an hour. The gaonburha was not called as he was absent at his home. The people questioned the accused-Dhan and broke down the articles in the shop. The accused was absent at his home after the occurrence. There were the houses of Renu Upadhyay, Geeta, Amar Sahu etc. near the house of the accused.

8. PW3 Shri Tak Bahadur Chetry stated that complainant is his younger brother. He knows the accused. Occurrence took place 3 months ago at about 5/6 AM. He was sleeping in his home after performing his night duty. His daughter informed him that people gathered at the shop belongs to the accused. He got to know about the incident after coming to the road. He heard that accused misbehaved the victim. Public questioned him (accused). Police took the accused to the police station and people also brought the victim to the police station. Police got her medically examined.

In cross-examination PW3 stated that he had not seen the occurrence but heard it only. People say that accused is a person of bad character. He had not seen the girl when he arrived at the place of occurrence. He had not seen the mother of the victim calling the gaonburha about the occurrence. When he went there, 10% of the shop was broken condition. Police cited their family members as witnesses. There was a gate in front of the shop and having a wooden window of the shop.

PW4 Smti 'X' (victim) identified the accused in the dock.

Her evidence is that on 22-06-2015 at about 6 A she went to accused's shop to buy sugar and khata book. Accused gave her sugar and then asked her what kind of khata book she wanted to buy. She replied that plain khata book is required for her. Then accused caught hold of her hands and dragged her into his shop through the window and touched her breast. She shouted. She wanted to flee away, but accused tried to put off her pant. She managed to get rid and came home weeping and told her mother about the incident. She became senseless and she regained her senseless at medical. Earlier she stated about the incident in the Court. Ext.3 is the statement given by her in the court and Ext.3(1) is her signature therein.

In cross-examination PW4 stated that she called the accused as 'Dada' (brother). He behaved her as 'Bhanti' (sister). She went to his shop on earlier occasions also. When she went to the shop the bamboo shutter of the shop was closed. She denied the defence suggestion that she has given false evidence as tutored by her mother. In her further re-cross examination PW4 stated that at the relevant time of occurrence the wife of the accused was sleeping along with her children in their house attached to the shop. Her family members broke down the shop of the accused after the occurrence. She denied that at the time of occurrence wife of accused was not sleeping. It is also denied that the accused did not do anything to her.

10. **PW5** Smti Geeta Sarmah stated that she knows the complainant- Dik Bahadur Chetry as well as the accused Dhan Rajbongshi. Occurrence took place about 9 months back at about 7 AM. There is a shop of the accused on the roadside (Pachmile). On the day of occurrence victim 'X' went to accused's shop to buy sugar and khata book. Accused pulled her inside his shop, touched her breast and tried to do bad act with her, but she somehow managed to escape from the clutch of the accused and told about the incident to her mother. Hearing hue and cries she came out from her

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house and saw that people gathered there. On being asked the girl, she (PW5)told that accused touched her breast, put off her pant and tried to do bad thing. Later on police came and took the accused to the police station. Police took the victim to the court. Police questioned her. Police also seized the wearing clothes of the victim vide ext.2, seizure list and Ext.2(1) is her signature. After the incident their children also afraid of going to school.

In cross-examination PW5 stated that there is no other shop near the shop of the accused. She heard about the incident only. There was more than 100 persons gathered at the P.O. The village gaonburha was not present there. She had no enmity with the accused or his family members. the family members of the accused.

- 11. **PW6 Smti Renuka Upadhyay** stated that she knows the complainant Dik Bahadur Chetry as well as accused Dhan Rajbongshi. There was a shop of accused in front of his house. Occurrence took place on 22-06-2015 in the morning at about 7 AM in the accused's shop. Hearing hue and cries he went out and saw many people gathered there and daughter of Dik Bahadur was weeping there. On being asked the girl, she told that she went to accused's shop to buy sugar and khata book and then accused touched upon her body and tried to do bad thing with her by removing her clothes. Police took the accused and the victim to the police station. Police recorded her statement.
- 12. **PW7 Smti Hima Chetry** stated that she knows the complainant Dik Bahadur Chetry as well as accused- Dhan Rajbongshi. Occurrence took place about 6/7 months back in the morning at about 7 AM. Her house is situated near the house of complainant. Hearing hue and cries he went to the house of complainant. Complainant's daughter (victim) told that while she went to accused's shop to buy some articles then he pulled her into his shop, touched her breast and attempted to do bad act with her by removing her clothes. People gathered in front of the accused's shop. On

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getting information police arrived at the PO and took accused to the police station. Police did not question her. Police took her signature. . .

13. **PW8 Dr. Nil Charan Kachari** stated that on 22-06-2015 he examined Smti 'X' (victim) at Gogamukh CHC vide GD Entry No.4/15 of Gogamukh Police station. The girl was escorted by UBC Pinki Tirky. On examination he found no injury of sexual assault or internal injury upon her body. Ext.3 is the injury report and ext.3(1) his signature.

Defence declined to cross-examine the Doctor.

14. **PW9 Shri Prafulla Saikia** stated that On 22-06-2015 he was working as 2nd Officer at Gogamukh police station. On that day one Dik Bahadur Chetry filed an enajar before the O/C Gogamukh police station and accordingly the same was registered as Gogamukh PS Case No.115/15 u/s 354B IPC R/W Section 4 of POCSO Act and entrusted him (PW-9) with the investigation of the case. During investigation he got the victim medically examined. He also visited the PO, drew sketch map of the PO and recorded statements of the witnesses. He arrested the accused and forwarded him to the court. He collected the medical report. On completion of investigation, he submitted charge sheet against the accused u/s 354B IPC R/W section 4 POCSO Act. Ext.4 is the sketch map and Ext4(1) is his signature. Ext.5 is the charge sheet submitted by him and Ext.5(1) is his signature. Ext.2 is the seizure list and Ext.2(3) is his signature. M. Ext.1 is the seized clothes which was seized by him (PW9).

In cross-examination PW9 stated that in Ext-4 he did not take the signature of neighbours- Harekrishna Rajbonshi and Sadhu Ghosh. He denied that he submitted Charge-sheet without proper investigation.

15. **DW-1 Shri Lekhan** Das stated that on 22-06-2015 at about 6 AM he went to the shop of the accused situated at Panchmile. Accused's house is attached with the shop on the road towards NHPC. On that day, he

saw a girl leaving the shop taking some articles. He also going away from the shop taking some goods. Later, he heard that accused was assaulted for committing rape on the girl (victim) and people broke down his (accused) shop. He did not see the gaonburha at the P.O. Family members of the victim girl were present there. False case has been lodged against the accused.

In cross- examination DW1 stated that accused called him to depose evidence in the court. His house is at a distance of 6/7 houses of the village. On that day, he went to the shop to buy surf, soap etc. When he went to the shop, there was no other person. He does not know that whether any incident was happened that took place before he going to the shop. Later, he came to know that something was happened there.

16. **DW2 Shri Tulendra Hazarika** stated that on 22-06-2015 in the morning at about P AM after getting-up from the bed, he saw that many people gathered near the shop of the accused. On asking he knew that one person assaulted the accused. His house is at the backside of the house of the accused. He heard that accused committed rape on a little girl (victim) aged about 10 years. At that time the girl was standing on the road along with a bi-cycle. Accused house is attached to the said shop. He does not think that accused committed such offence. False allegation has been raised against the accused. People had broken the shop and the house of the accused. Accused's wife and his daughter used to stay in that house.

In cross-examination DW2 stated that his house is situated at a distance of about 5 Meter from the house of the accused. He does not know whether the occurrence took place or not. He stated that he came alone to the Court.

Appreciation of evidence :

 From the discussion of the evidence it appears that prosecution examined the victim as PW4. The victim in her evidence stated that on the

date of occurrence at about 6 AM she has gone to accused Dhan Rajbongshi's shop to buy khata book and sugar. Accused gave her the sugar and then he asked her what type of khata book she wanted. Then she replied that she wanted plain khata book. At that point of time accused caught hold of her hand and dragged her into his room through the window of his shop. She also stated that accused touched her breast. Further she stated that she raised alarm and when tried to escape accused attempted to remove her underwear. She also stated that she somehow freed herself and ran away. Victim's statement was recorded u/s 164 Cr.PC and in her statement u/s 164 Cr.PC victim has given similar statement as she has done in her evidence during trial. PW1, the complainant in her evidence stated that on 22-06-2015 at about 6/7 AM her daughter went to Dhan Rajbongshi's shop to purchase sugar and Khata books. After a while her daughter returned home crying. On being asked her daughter told him that accused physically abused her by touching her breast and also removed her underwear with intent to commit sexual assault. PW3 and PW5 stated that on the relevant date the victim had gone to the accused's shop to buy some articles and she returned home crying. On hearing hulla they came to the PO and heard that the accused physically abused the victim. PW5, PW6 and PW7 stated that they heard about the incident from the mother of the victim.

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In the cross-examination defence elicited from the victim that when she went to the shop it was half closed and accused's wife was sleeping along with her children in the house attached to the shop. However, victim denied that the accused did not commit the offence. PW1 in her cross examination stated that there is another shop near the shop of the accused. He also stated that he cannot say whether said shop was open. PW1 also stated that it was an area dominated by Nepali population. Both PW1 and PW4 also stated that immediately after the incident the local people destroyed the shop of the accused and the accused left that place.

- 18. I have carefully considered the evidence brought on record by the prosecution side. From the oral evidence of the victim as well as other witnesses it is found that all the witnesses have unequivocally stated that on the date of occurrence at the relevant time victim went to the shop of the accused to buy some articles and the accused physically/sexually abused her by touching her breast/body and by attempting to commit rape by removing her clothes. The victim has given categorical account of the incident. So far as medical evidence is concerned doctor did not find any injury of sexual assault of internal injury on the body of the victim. However, taking into consideration all the materials fact and having regard to the rules of evidence I am of the opinion that though the doctor did not find any kind of injury on the person of the victim, in the facts and circumstances of the case I find it difficult to disbelieve or discard the credible evidence of PWs. It is not in dispute that the victim is a minor aged 12 years as per her statement which is also mentioned in the medical report.
- 19. Coming to the evidence of DWs we find that DW1 in her evidence stated that on the relevant date she saw one minor girl leaving the shop of the accused after buying articles. DW1 also stated that she heard that the minor girl was tried committed rape by the accused. At the same time DW1 stated that false case has been filed against the accused. DW2 has given similar evidence.
- 20. Having considered the evidence in its entirety I find that prosecution evidence is reliable and convincing and it over weighs the defence evidence. It is a case under POCSO Act. Section 29 says:

Presumption as to certain offences.—'Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has

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committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.'

21. Having considered the evidence and fact materials I find that prosecution evidence constitutes an offence u/s 7 of POCSO Act which reads:

Sexual Assault.—'Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.'

22. In view of what has been discussed above I find that prosecution has been able to prove an offence u/s 8 of POCSO Act against accused Dhan Rajbongshi beyond all reasonable doubt.

ORDER:

- 23. In the result I find the accused **Dhan Rajbongshi** guilty u/s 8 of the POCSO Act. Accordingly he is convicted thereunder.
- 24. Heard the accused person on the point of sentence u/s 235 (2) Cr.PC.
- 25. It is submitted that the accused is a poor man having wife and a minor child and he is the only earning member of his family. So he pleaded for mercy.
- 26. Considering all the aspect the accused is sentenced to R.I. for 3(three) years and to pay a fine of Rs.2000/-(two thousand) i/d. R.I. for another 1(one) month.
- Issue jail warrant.
- Set off the period of detention.

- A copy of judgment free of cost be given to the accused.
- Judgment is pronounced in open Court.
- 31. Given under my hand and seal of this Court on this the **08**th day of March, 2019.

S. Das

Special Judge, Special Judge, Oblinarinaji.

Appendix:

Prosecution Witnesses

P.W.- 1 - Dig Bahadur Chetry, P.W.-2 - Smt Kalpana Chetry, P.W.-3 -Tak Bahadur Chetry, P.W.-4 - Smti 'X' (victim), P.W.-5 - Smti Geeta Sarmah P.W.-6 - Smti Renuka Upadhyay P.W.-7 - Smti Hima Chetry P.W.-8 - Dr. Nil Charan Kachari, P.W.-9 - Prafulla Saikia,

Defence Witnesses:-

D.W.1- Lekhan Das

D.W.2- Tulendra Hazarika

Prosecution Exhibits

Exhibit-1 - Ejahar, Exhibit 1(1) - Signature of Dig Bahadur Chetry, Exhibit 2 - Seizure list, - Signature of Dig Bahadur Chetry. Exhibit 2(1) Exhibit 2(2) - Signature Smt Geeta Sarmah, - Signature Prafulla Saikia, IO. Exhibit 2(3) Exhibit 3 - statement of victim . - Signatures of victim, Exhibit-3(1) Exhibit 4 Sketch map,

- Signature of Prafulla Saikia,

Exhibit 5 (1) - Signature of Prafulla Saikia,

- charge sheet

Material Exhibits:

Exhibit-4(1)

Exhibit 5

M.Exhibit-1 — clothes of the victim,

Defence Exhibits :- None.

(S. Das)
Special Judge,