IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.51 of 2017

(U/S 448 IPC/ Sec.8 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of AssamComplainant.

-Versus-

Sri Rabindra Das alias Rabi Das......Accused

Charge framed on:-.....27.04.18.

P.Ws. examined on: - 28.05.18, 11.6.18,24.07.18,7.08.18,21.8.18,

Argument heard on:-26/8/19

Judgment pronounced and delivered on:-....9/9/19

Counsel Appeared:

For the State :Smti. Bithika Acharjee, Ld. Special PP

For the Accused :Mr. Debasish Sengupta, Ld.Legal Aid Counsel.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 28.8.17 the informant Tumpa Sutradhar lodged an FIR with the I/C of Tarapur Outpost stating

that on 26.08.17 at about 12 noon while the victim, the daughter of the informant was watching TV in absence all the other members of the family, the accused also came to watch TV and thereafter the accused person pressed the mouth of the victim by a pillow and removed her penty and forcibly scuffled with her.

On receipt of the FIR, the same was forwarded to the Silchar PS and a case was registered vide Silchar P.S. Case No.2069/17 U/S 448 IPC read with Section 8 of POCSO Act. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The victim girl was also sent to SMCH, Silchar for medical examination. The investigating officer visited the place of occurrence and also recorded statement of the witnesses and subsequently after completion of investigation submitted charge sheet against accused Rabindra Das U/S 448 IPC read with Section 7 of POCSO Act.

- 2. The offence of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial after filing of the charge sheet. In due course, upon appearance of the accused and after hearing both sides formal charge U/S Section 448 IPC and U/S 7 of POCSO Act was framed by my ld. predecessor in office against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried. Subsequently, after hearing both sides the charge is altered to Section 448 IPC and u/s 8 of POCSO Act. The contents of charges having been read over and explained to the accused to which the accused pleaded not guilty and claimed to be tried.
- 3. Now, in the present case the points to be decided are :-

- (i) Whether on 26.08.17 at about 12 noon the accused committed house trespass by entering into the dwelling house of the informant, as alleged?
- (ii) Whether the accused with sexual intent removed the panty of the victim and sexually assaulted her, as alleged?
- 4. From the prosecution side as many as 7 (seven) witnesses have been examined including the M.O. The defence side has examined none. Statement of the accused was recorded U/S 313 Cr.P.C. The defence plea is total denial of the allegations. I have gone through the entire evidence on record and have also heard the argument put forwarded by the learned counsel for both the parties.
- 5. Let me now discuss the evidence below in details:

PW-1, Smti. Tumpa Sabdakar, who is the informant of this case deposed in her deposition that on 26.08.17 when she returned from her place of work she found some people of the locality assembled in her house. Her eldest daughter Kaberi alias Tumpi sabdakar reported her that accused Rabi Das at the time of occurrence pressed the mouth of her younger sister Rimpi by a pillow and had done bad acts after putting off her wearing underpant and the victim was then laid down in the bed and she became unconscious. Then Kaberi raised hue and cry and people of the locality assembled therein and someone sprinkled water on the face of victim and she regained senses. She further deposed in her deposition that at the time of occurrence her said daughter was a student of class III and her husband who was a rickshaw puller by profession was not at home at the time of occurrence. Thereafter PW.1 lodged the FIR vide Ext.1 wherein Ext.1(1) is her signature.

PW-1 in her cross examination disposed that at the time of incident her daughter was alone inside the room and her other brothers

and sisters were playing outside. She further deposed that she did not see the incident and she had heard about the same from her daughter. She further stated in her cross examination that accused used to reside in a rented house adjacent to their house.

- 6. PW.2 Sunati Sabdakar deposed in her evidence that about six months back at noon the accused has done bad acts with her granddaughter Rimpi. Hearing hue and cry PW.2 came to the place of occurrence and also found people of the locality assembled there and she found Rimpi in an unconscious state. Chumki, another granddaughter of PW.2 reported him that accused had done bad acts with Rimpi in her private parts and she became unconscious.
- 7. PW-2 in her cross examination stated that she did not see the occurrence but she heard about it.
- 8. PW.3 Chandan Sabdakar, the husband of the informant deposed in his evidence that on 26.08.17 at about 12 noon when he was not present in his house the occurrence took place. When he returned after 10/20 minutes of the occurrence he found many people assembled there and he also found Rimpi was lying on the bed in an unconscious state. The eldest daughter of the PW.3 namely Chumki reported him that while Rimpi was lying in the bed the accused Rabi Das pressed her mouth by a pillow for doing bad acts with her.
- 9. PW-3 in his cross examination stated that he cannot say after how many days of the incident police came to the place of occurrence, and that he also cannot remember the date of the occurrence. PW.3 also stated in his cross examination that he did not see the incident.
- 10. PW.4 Sujit Sabdakar deposed in his deposition that on 26.08.17 at about 1 p.m. when he returned home at noon the mother of Rimpi reported him that the accused Rabi Das had done bad acts with Rimpi.

PW.4 found Rimpi in an unconscious condition lying in the bed.

In his cross examination PW.4 stated that he does not have any knowledge about the ailment of the victim before the occurrence.

- 11. PW.5.Smti Rimpi alias Sania Sabdakar stated in her deposition that at the time of occurrence her parents went for their respective works and when she was watching T.V. Iying in the bed the accused came and put off her penty and pressed her mouth with a pillow and thereafter she could not say anything and she regained her senses when somebody sprinkled water on her face. At the time of occurrence there were none other persons other than her in their house. After regaining her senses she reported the matter to her maternal aunt first who told the same to her mother and thereafter her mother caught the accused and tied him.
- 12. PW.5 stated in her cross examination that when the accused pressed pillow on her mouth she became unconscious and thereafter she could not say what had happened.

It was put to PW.5 during her cross examination by the defence in the form of suggestion that she did not state to police that accused put off her panty and when she raised alarm the accused pressed pillow on her mouth, and that she regained senses when somebody sprinkled water on her face and thereafter she told the matter to her maternal aunt 'pishi', and that her mother caught the accused and tied him, to which the PW-5 denied.

13. PW.6, S.I. of police who is the IO and deposed in his deposition that he had done the various routine works of investigation such as visiting of place of occurrence, getting done medical examination of the victim and recording of her statement u/s 164 Cr.P.C., recording of statement of the witnesses and ultimately the PW.6 submitted charge sheet against the accused person after completion of investigation.

In his cross examination the PW.6 stated that he went to the place of occurrence on 28.08.17 at about 2-30 p.m. along with one staff and parents of the victim girl but he did not meet the victim there and that he heard the victim was taken to hospital on being escorted by police woman. Thereafter, the victim and her mother came to police station to lodge the complaint.

PW.6 in his cross examination stated that PW.1 did not state before him that accused had pressed her mouth by pillow.

PW.6 also in his cross examination admitted that he did not seize any material.

14. PW.7 Dr Monalisa Dev deposed in her deposition that on 28.08.17 on police requisition she examined victim Rimpi Sabdakar .The victim and her mother gave history that at the relevant date and time when the victim was alone at home one man named Rabidas came into their house and dropped her into bed and opened her panty and forcefully tried to have sexual intercourse and then ran away.

PW.7 further deposed in her deposition that in her opinion the age of the individual is above seven years and below nine years, evidence of recent sexual penetration not detected as on date of examination, injury marks not detected on her person or genitals as on date of examination and the HCG Test done in FSL Department was negative as on date of examination. The defence declined to cross examine the PW.7

15. Appreciating the evidence on record it is found that PW.1 Smti Tumpa Sabdakar, mother of the victim is the informant of the case and is a reported witness. During her cross examination she specifically stated that she did not see the incident but heard the same from her daughter. PW.2 Sunati Sabdakar is also a reported witness to whom her another

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granddaughter Chumki had reported that accusd had done bad acts with Rimpi in her private parts and she became unconscious. PW.2 also stated that she found the victim in an unconscious state. Similarly PW.3 Chandan Sabdakar, the father of the victim, was also a reported witness. He has stated that his eldest daughter reported him that while the victim was lying in the bed the accused Rabi Das pressed her mouth by a pillow for doing bad acts with her. PW.4 Sujit Sabdakar is also a reported witness who has stated that the mother of the victim i.e. PW.1 had reported him that the accused had done bad acts with the victim. He also stated that he found the victim in an unconscious condition lying in the bed. PW.6 is the IO who has narrated various stage of investigation conducted by him. PW.7 is the doctor who had examined the victim. PW.7 in her statement has stated that at the time of examination the victim and her mother gave history that on the relevant date and time when the victim was alone at home one man named Rabidas came into their house and dropped her into bed and opened her panty and forcefully tried to have sexual intercourse. Although PW.7 has opined that there was no recent sexual intercourse or penetration or there was no injury detected but she has opined the age of the victim as above seven years and below nine years.

16. From the above evidence on record it appears that none of the above P.Ws had seen the actual occurrence rather it is evident from the evidence of PWs.1,2,3 and 4 that the victim was found in an unconscious state.

PW.5, the victim has stated in her evidence that the at the time of occurrence her parents went for their respective works and she was watching TV lying on the bed and at that time accused came and put off her panty and pressed her mouth with a pillow and thereafter she could not say anything and she regained her senses when somebody sprinkled water on

her face. She also stated that after regaining her senses she reported the matter to her maternal aunt first who told the same to her mother and thereafter her mother caught the accused and tied him. During cross examination she stated that when the accused pressed the pillow on her mouth she became unconscious and thereafter she could not say what had happened. PW.7, the doctor has also supported PW.5 to the effect that PW.5 and PW.1 had narrated the history to her at the time of examination.

- 17. It is evident from all the evidence of all the witnesses that the victim was alone in her house at the relevant point of time and she was found in an unconscious state, and the above evidence remains unrebutted. The victim in her statement specifically stated that while she was lying on the bed watching TV the accused came and removed her panty and pressed her mouth with a pillow and she tried to raise alarm but the accused put the pillow on her mouth and thereafter she could not say what had happened and she regained her senses when somebody sprinkled water on her face.
- 18. Sexual assault is defined in Section 7 of the POCSO, ACT as:

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.

In the instant case the evidence of the victim that accused put off her panty while she was alone in the house and lying on the bed watching TV remains unrebutted and there is no reason to disbelieve the said evidence of a girl below nine years of age. The said act is sufficient to prove that the accused removed the panty of the victim with sexual intent which involves physical contact without penetrations and tantamounts to sexual assault as defined in Section 7 of the POCSO Act 2012. Although the

accused had suggested the victim that the accused never came to their house and never committed the alleged offence but mere suggestion is not sufficient to rebut the evidence of the victim to the effect that the accused came to her house and committed offence as stated by her.

- 19. As per section 29 of the Protection of Children from Sexual Offences Act,2012 when a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and 9 of this Act, the Special Court shall presume , that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved.
- 20. In the instant case, the allegation is that the accused has committed the offence as defined u/s 7 of Protection of Children from Sexual Offences Act,2012 punishable as per section 8 of the Act and the victim has specifically stated and implicated the accused and hence it is lawful for this court to presume that the accused has committed the offence and burden lies upon the accused to rebut or to prove the contrary to which the accused has failed.
- 21. In view of the above evidence on record, it appears that the prosecution has able to prove both the offences i.e. section 448 of IPC and Section 8 of Protection of Children from Sexual Offences Act,2012 against the accused beyond all reasonable doubts.
- 22. Accordingly, the accused is convicted for the offence u/s 448 of IPC and section 8 of the Protection of Children from Sexual Offences Act, 2012.
- 23. Heard the accused on the f point of sentence to which he submitted that he is having his wife and brother in his house and he is the only earning member of his family and hence prayed for exonerating him.
- 24. Upon consideration of the nature and gravity of the offences, I declined to provide the benefit of provisions of probation of offenders Act to

the convict.

25. Accordingly the convict accused is sentenced to undergo S.I. for a period of 3(three) months for the offence u/s 448 of IPC and to undergo R.I. for a period of 3(three) years and a fine of Rs.500/- i/d S.I. for 15 days for

the offence u/s 8 of the Protection of Children from Sexual Offences

Act,2012.

26. Both the sentences shall run concurrently.

27. The period already undergone in jail hajat be set off from the period

of sentence.

28. Furnish a free copy of this judgment to the convicted person forthwith.

29. Also transmit copy of this judgment to the District Magistrate,

Cachar, Silchar.

Given under my hand and seal of this Court on this the 9th day of

September, 2019.

Sessions Judge,

Cachar, Silchar.

Dictated & corrected by me.

Sessions Judge,

Cachar, Silchar.

Transcribed by K.Bhattacharjee, Stenographer

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 51 of 2017.

<u>APPENDIX</u>

(A) PROSECU	<u>JTION WITNESSES:</u> -
P.W. 1	 Smti. Tumpa Sabdakar
P.W. 2	– Sunati Sabdakar
P.W. 3	Chandan Sabdakar
P.W. 4	 Sujit Sabdakar Mona Konda.
P.W. 5	- victim.
P.W. 6	- SI Sri P. Buongpui.
P.W. 7	- Dr. M.Dev.
(B) <u>DEFENCE WITNESSES</u> : - NIL	
(C) PROSECUTION EXHIBITS: -	
Ext. 1	– FIR.
Ext. 2	Statement of victim.
Ext.3	 charge sheet
Ext.4	 Medical report.
Ext. 5	-requisition for X ray report
(E) <u>DEFENCE EXHIBITS</u> : - NIL.	
` ,	XHIBITS: - NIL.
(G) EXHIBIT:	S PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.