IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 39 OF 2016

(Under Section **8** of the POCSO Act, arising out of GR Case No 3928 of 2016)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Gopal Mandal

S/o Sri Ramesh Mandal, Vill- Kusumtola, P.S. – Jamuguri, Dist- Sonitpur.

Date of framing charge :- 02-11-2017

Date of Recording Evidence :- 04-01-2018, 06-02-2018.

Date of examination of accused u/s :- 06-02-2018.

313 of Cr.P.C.

Date of Argument :- 06-02-2018.

Date of Judgment :- **06-02-2018.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Mr A Bhuyan, Advocate.

JUDGMENT

- 1. In this case accused Gopal Mandal is put for trial for the allegation of charge under Section 8 of the POCSO Act.
- 2. The various facts leading to institution of this case according to FIR in brief is that the informant is the wife of an employee of 12th APBn of Sootea and resides at the campus of the said Battalion. At the time of filing the ejahar, the

informant's husband was posted at Guwahati and therefore, his 17 years old younger brother Kushal Panyang used to stay with the informant. But, on or about 5.30 PM of 23-11-2016 while the informant's younger brother went to Kusumtola Centre for marketing and returned to informant's house, the accused followed him with a bad intention, embraced him and attempted to commit misdeed. But, somehow the informant's brother was save. Hence, this prosecution case.

- 3. The ejahar was filed by the informant Smti Deiji Prabha Pawe before the OC, Jamuguri Police Station on 24-11-2016.
- 4. On receipt of the ejahar, O/C, Jamuguri Police Station registered the case vide Jamuguri Police Station Case No 158/16 under Section 8 of POCSO Act. After completion of investigation, O/C, Jamuguri Police Station sent up the case against accused person Gopal Mandal under Section 8 of POCSO Act.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 8 of POCSO Act. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined as many as six PWs including the informant and victim. After examination of the witnesses, learned Counsel for the accused submitted to close the prosecution evidence on the ground that the victim(PW5) stated nothing against the accused as to the alleged charge under Section 8 of POCSO Act. Therefore, it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. A close scrutiny of the statement of witnesses, particularly the victim, it appears that the statement of victim did not reveal the materials of alleged charge. Therefore, I think that it would be futile to examine the other witnesses. Even if examine the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused person. Considering this all, prosecution evidence is closed.
- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused person and the allegations made against the accused

person are put before him for his explanation where he denied the allegations and declined to give defence evidence.

- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that –

(1) "Whether the accused on or about 5.30 PM of 23-11-2016 on the way from Kusumtola Centre to 12th APBn Quarter under Jamugurihat police station committed sexual assault on Kushal Panyang aged about 17 and thereby committed an offence punishable under Section 8 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- 12. PW1 Sri Prabhat Nath deposed that the accused Gopal Mandal was one of the constables of their battalion. The incident took place on 23-11-2016. At the time of incident, he was posted as Habildar at 12th APBn Camp, Head Quarter, Kosumtola. At that time they have heard from our companion that one of our battalion constables was beaten by public. Accordingly, he went out to see the incident. Then he came to know that it is the accused Gopal Mandal who is our constable. He was trying to rescue him from the public, but, the public refused to hand over him the said person. Then, he informed the matter to our senior.
- PW2- Sri Ram Nath Teron, who turned hostile by the prosecution, 13. deposed that the accused was one of the constables of their battalion. The incident took place on 23-11-2016. At the relevant time he was on duty of Regimental Police Duty on Gate of the Battalion Head Quarters. During that time, a lady came to their battalion to file one application, I was on gate duty, So, he asked their Battalion Habildar lady Prabhat Nath. He suggested the said to representation/application in Dispatch Branch. Other than that, he does not know about the incident. Police did not record his statement. Then he turned hostile.

In his cross-examination, he stated that he has no enmity with Deiji Prabaha Pawe or with Kushal Panyang, therefore, there is no reason to made false statement today.

- 15. PW3 Smti Bulumoni Das deposed that she cannot recall when the incident took place. She does not know anything about the incident. I have even not heard anything about the incident. Police recorded my statement. One Manash Powe asked me to show the house of Gopal Mandal. Accordingly, I showed the said person to the house of Gopal Mandal. Said Manash Powe told me that Gopal Mandal took one boy for doing misdeed.
- 16. PW4 - Smti Deiji Prabha Pawe, the complainant of this case deposed that the incident took place about one year ago. At the relevant time, her husband was posted on deputation at Guwahati. Therefore, she has kept her brother Kushal Panyang with her. At the relevant time, her younger brother Kushal Panyang was about 16 years. On the date of incident, in the evening time at about 5.30 PM she has sent her said younger brother to purchase vegetable from Kosumtola Centre. While he returned to home, accused Gopal Mandal followed him and dragged him to a dark place. Then her brother asking what he wants to do, then accused embraced her brother. The accused also attempt to put off her brother's pant. Then her brother rescued somehow and came to her home and reported the whole incident to her. As her husband was there at our home, her brother also reported him about the incident. Then her husband asked her brother whether, he can identify the accused. Then her brother told that he can identify the accused. Then her husband and brother went out to search of accused. On the way they meet Bulu Das Baideo near the Namghar inside our campus and her husband asked said Bulu Baideo, where Gopal Mandal resides. Then Bulu Das showed the house of Gopal Mndal. Accordingly, her husband went to the house of Gopal Mandal and called him. But, he could found Gopal Mandal. Then, mother of Gopal Mandal told her husband that Gopal Mandal was at the relevant time inside their home. But, after sometime accused Gopal Mandal came out from our house and confessed his guilt before her husband and asked him to excuse him. Then, her brother identified the accused. Then, she lodged the ejahar. Ext. 1 is the said ejahar and Ext. 1(1) is her signature. Along with the ejahar, she has filed Photostat copy of age certificate of her brother and also filed one Photostat copy of Registration Card of HSLC of her brother. The ejahar was

written by herself.

In cross-examination, she stated that she has sent her brother Kushal Panyang to market and he accordingly went to market alone. Market is situated at a distance of about 2 KM from her house. She does not know anything about the incident, till his return from market. She has not seen the incident personally. Her brother told her that in dark place accused tried to drag him. He saves somehow and ran to the out. When her brother was taken by her husband to the house of accused, she was at her home. She has not accompanied them. She has made statement today as reported by her brother and husband. In previous occasion also, accused tried to drag her brother. During that time they have informed their senior authority.

17. PW5 - Sri Kushal Panyang, the victim of this case stated that the incident took place on 23-11-2016 at about 5.30 PM. During that time, she went to Kosumtola Centre to purchase vegetable from his sister's house. When, he return to my sister's home, as he reached near a Namghar inside the battalion campus, accused Gopal Mandal followed him and asked him where from you and then he told him that he came from market. Thereafter, the accused again followed him and near the Namghar he dragged him in a dark place and attempted to put off his pant. Then, he somehow rescued himself forcefully. Then, he went to her sister's house and reported the matter to his sister. Then, he called his brother-in-law Manash Pawe and informed the matter. Then, he went to the house of Gopal Mandal and on the way they met one lady namely Bulu Das Baideo. Then, his brother-in-law asked Bulu Das about the house of accused Gopal Mandal. Then she showed us the house of accused. Then we went to the house of accused Gopal Mandal and though initially Gopal Mandal did not come out, but, ultimately come out and his brother-in-law asked about the incident to him. He asked him that at the time of incident, he put another shirt, but, at the time of search he put different shirt. Though the accused initially did not confess his guilty, but, subsequently, he confessed his guilty and also asked us for excuse him. He also stated that once in the month of September, 2016, the accused attempt to follow his. Then, his sister filed the written complaint to DSB. Then, police recorded his statement and also sent him to the Court for recording his statement under Section 164 of CrPC. Ext. 2 is his statement recorded under Section 164 CrPC, where Ext. 2(1) and Ext. 2(2) are his signatures.

In his cross-examination, he stated that on the way to home from

market, accused asked him from where he has come. There are quarters near the Namghat. When accused dragged him, he did not raise alarm. Then, a scuffle took place between him and the accused. Then he somehow rescued from the clutch of the accused and ran towards his sister's home. So, accused did not able to do anything, except the scuffle. Accused has also tried to pull his shirt. Thereafter, he had a scuffle. He has reported the whole incident to his elder sister. He has not reported to police about the incident of September,2016. On the day of incident, he has only came to know the name of accused from Balu Baideo. He does not know the contents of ejahar which was lodged by his sister. My brother-in-law did not file any case. Other than his sister and Bulu Das, he has not reported the matter to any person. Police took him to before the Magistrate for recording his statement under Section 164 CrPC after about one week of incident. When police took him to the Court for recording him 164 CrPC statement, he has accompanied by her elder brother-in-law Deba Kt Tide.

18. PW6- Sri Lakhi Kalita deposed that on 25-07-2017 he was posted as a Sub-inspector of police at Jamuguri PS. On that day, a case diary of Jamuguri PS Case No 158/16 was handed over to him by previous IO Raju Bahadur Chetri, OC, Jamuguri PS for verbal investigation. On receipt of the case diary, I have thoroughly perused. It appears to him that his earlier IO almost completed the investigation. Therefore, upon the case diary based on investigation made by his predecessor, he filed charge sheet against the accused Gopal Mandal under Section 8 of POCSO Act. Ext. 3 is the charge sheet and ext. 3(1) is his signature.

In his cross-examination he stated that he has not done any investigation of the case, nor he has recorded any statement of the witnesses. He denied the suggestion that he has filed charge sheet against the accused in spite of having no any materials against the accused.

- 19. These much is the prosecution evidence.
- 20. The learned Counsel for the accused submitted that prosecution has failed to prove the case, as the victim stated nothing ingredients of the alleged charged. According to victim (PW5) at the relevant time he went to Kusumtola Centre for purchase vegetable for his sister's house. When he returned to his sister's house and reached near the Namghar inside the battalion campus, accused followed

him and asked him where he had come and then he told him that he came from market. Thereafter, accused again followed him and near the Namghar dragged him in a dark place and attempted to put off his pant. Then he rescued somehow and at home reported the matter to his sister and in cross-examination, he admitted that when accused dragged him, he did not raise alarm and then a scuffle took place in between him and the accused and then somehow he rescued from the clutches of the accused and ran towards his house. Therefore, he stated nothing any incriminating evidence of the alleged charge of sexual assault. As such, prosecution failed to prove the ingredients of the alleged charged.

- 21. I have also heard the learned PP. Keeping in mind the rival submissions advanced by the learned Counsel for both the parties, I am going to dispose of the case as follows.
- 22. Before parting with the case record, I would like to see the ingredients of sexual assault. According to definition of Sexual Assault, which defined to Section 7 of POCSO Act that :-

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child and 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 assaualt**".

- In this type of cases, the evidence of victim is utmost necessary. Here in this case, from the statement of victim(PW5) nowhere stated about any ingredients as stated in Section 7 to attract the offence of Sexual Assault. Here in this case, there are no other eye witnesses except the victim. As discussed herein before, the victim nowhere stated anything about ingredients of alleged offence. It also appeared that PW2 Sri Ram Nath Teron was turned hostile. The hostile portion of evidence is nowhere corroborated by the statement of any other witnesses. Therefore, his hostile portion of statement cannot be used to convict the accused in the alleged charged. In view of the aforesaid discussion, the charge under Section 8 of PPOCSO Act is failed to prove by the prosecution.
- 24. On careful perusal of the whole case record as discussed herein before, I am bound to hold that prosecution has failed to prove the alleged charged against the accused. As such, the accused is entitled to get the benefit of doubt.

Accordingly, accused Gopal Munda is acquitted on benefit of doubt and set him at liberty forthwith.

- 25. The liability of the bailor is hereby discharged.
- 26. Send back the LCR.

Given under my Hand and Seal of this Court on this the 6th day of February, 2018.

(A. K. Borah) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.

Dictation taken and transcribed by me;

Smt. Pori Das, Steno.

APPENDIX

Witnesses examined by the prosecution:

- 1.PW1 Sri Prabhat Nath,
- 2.PW2 Sri Ram Nath Teron,
- 3.PW3 Smti Bulumoni Das,
- 4.PW4 Smti Deiji Prabha Pawe(complainant),
- 5.PW5 Sri Kushal Panyang(victim) &
- 2.PW6 Sri Lakhi Kalita(IO).

Documents exhibited by the prosecution:

- 1. Ext. 1: The ejahar.
- 2. Ext. 2: Statement of the victim recorded under Section 164 CrPC &
- 3. Ext. 3 : Charge sheet.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.