## IN THE COURT OF ADDL SPECIAL JUDGE (FTC)::KOKRAJHAR

Present :- Sri C. Chaturvedy, Addl. Special Judge (FTC), Kokrajhar.

> Special Case No.07/2018 U/S.8 of POCSO Act

> > STATE OF ASSAM

Vs

Md. Mofizul Sheikh S/O Lt. Sofiur Ali Vill. Nederalga, Hakna Pt. I P.S Bilasipara, Dist. Dhubri

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Kumar Ghosh, Special P.P

Learned Counsel for the defence Mr. Rantan Jhangkar Borgayary

Legal Aid Counsel

Charge framed on 31.05.2018

Evidence recorded on 27.06.2018; 07.12.2018;

17.12.2018; 07.01.2019;

28.01.2019

Argument heard on 15.02.2019

Judgment pronounced on 25.02.2019

## **JUDGMENT**

- 1. The case of the prosecution is that on 20.10.2017 one xxx, the father of the victim, lodged an ejahar with the Officer-in-charge of Kokrajhar Police Station alleging that on 19.10.2017, at about 12 noon, while his minor daughter, the victim, aged about 10 years, had gone to Gaurango Park, accused Mofizul Sheikh forcefully attempted to rape her but she managed to escape.
- 2. On receipt of the FIR, a case U/S 7 / 8 of Protection of

Children from Sexual Offences Act, 2012, (POCSO Act) was registered and investigated. After completion of investigation, a charge-sheet was laid against the accused Mofizul Sheikh for commission of offence U/S 7 / 8 of POCSO Act. The case was later, transfered to this Court for disposal.

- 3. Upon hearing both sides, a charge U/S 8 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial, prosecution examined 7 witnesses and closed its evidence. Accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

#### **POINT FOR DETERMINATION :-**

a. Whether the accused committed the act of sexual assault on the victim?

## **DECISION WITH REASONS:**

5. P.W.1, the victim, a girl aged about 11 years, deposed that the occurrence took place about 7 /8 months ago. She had gone to jungle to call her mother and while she was shouting for her mother, the accused came there and asked her as to whom she is inquiring about. She replied that she is searching for her mother. The accused then told her that he had seen her mother towards the gate of the Bilasipara Court. Pw 1 deposed that while she was going towards the Court, accused came and suddenly caught hold of her and after closing her mouth he forcefully opened her

leggings till her knee portion and pushed her on the ground but, as deposed to by pw 1, she somehow managed to escape by giving a kick to the accused and came running to her father. Later, her father lodged the case.

- 6. In her cross-examination, the victim deposed that she is reading in class VII. The day of occurrence was a holiday and the Court and her school was also closed. She further deposed that home-guards remain on duty on the gate of the Court but on the day of incident there were no policemen or home-guard. There is also one sub-way near the Court to visit in the field. The people used to come by the road even by bicycle or motor-bike. The place of occurrence is a Sal Bagan and there are lots of Sal trees in the jungle. The people used to graze their cows and goat in the jungle.
- 7. Pw 1 denied the suggestion that that it was a working day and that the accused did not open her leggings. She, however, admitted that she does not know about the contents of the FIR. She denied the suggestion that she had given her statement U/S 164 of Cr.P.C as tutored by her parents.
- 8. P.W.2, Ayesha Bibi deposed that the incident took place about 8 months ago. At about 10 am, she was also collecting firewood in the backside of the Court when the victim came to her and inquired about her mother. She told that she may be a bit far and aksed her to search for her mother. Later on, she heard that the accused tried to take away the victim. She also saw the accused while police arrested him.

- 9. In cross-examination, she stated she heard about the incident from her co-villagers.
- 10. PW3, Abu Bakkar Ali, deposed that the occurrence took place about one year back. He heard that the accused had pulled up the minor daughter of xxx, the father of victim, near Florican Garden and in this regard he was called by the police and he had given statement accordingly.
- 11. In cross-examination, PW3 stated that he had not seen the occurrence and that he has been cited as witness by the police because he is VCDC member.
- 12. PW4 xxx, the mother of the victim, deposed that the incident occurred about one year back at about 10 AM in the morning. On the day of occurrence she was collecting fire-wood in the bush. She deposed that her husband had received the news of the illness of their elder daughter and accordingly asked their younger daughter, the victim, to infom me. She deposed further that when her daughter reached the entrance gate of the SDIM(M) Court at Bilasipara, the accused informed her that her mother, pw 4, is collecting fire-wood in a particular direction. Thereafter, the accused caught hold of the victim, dragged her and started to remove her under-garments in the jungle area. Her daughter started shouting and she resisted the acts of the accused. She somehow managed to come out of the grip of accused by pushing him. Thereafter, as deposed to by pw 4, the victim immediately returned to the residence and informed her husband. Pw 4 further deposed that on the following day, the accused came to work in a

Hotel inside the SDJM(M), Court campus. She along with others went to Court campus where the victim identified the accused. The accused also admitted in front of us that he had dragged the victim and removed her under garments.

- 13. PW4 in her cross examination stated that she came to her residence at about 11-30 AM. She also deposed that she had gone to the place of occurrence after coming to know about the incident. She denied the suggestion that in and around the Court complex police personnel always remain present. She denied the suggestion that she has deposed falsely.
- 14. PW5 Md. Romis Ali deposed that the informant is his younger brother. The incident took place about one year ago. He was grazing his cows near the SDJM complex, when he heard noise coming from a crowd of people. He saw his younger brother, the father of victim, and he asked him about the incident to which he informed that yesterday while his daughter, the victim, was going to call her mother from the jungle, the accused dragged his daughter and attempted to remove her clothes but his daughter managed to escape.
- 15. PW6 xxx, the father of the victim, deposed that the occurrence took place about one year back at 10-11 PM. He was in his house. His wife had gone to pick fire-woods. At that time he received a phone call from his elder daughter that she is ill. He asked his younger daughter, the victim, to call her mother from the bushes and the victim went to call his wife. Pw 6 further deposed that just near the SDJM Court highway, the accused met

his daughter and informed her that her mother is picking fire-woods in a particular direction. His daughter followed the accused. At a lonely place, the accused grabbed his daughter and tried to open her under-garments. His daughter somehow managed to escape from the clutches of accused and after coming to house she reported the matter to him. Thereafter, Pw 6, alongwith some villagers, went in search of the accused. Some boys near a stall informed him that they have noticed a boy running towards the jungle and also told him that the boy works in a hotel in the Court campus. On the following day, pw 6 alongwith his daughter went to the Hotel in the Court campus where his daughter identified the accused. Thereafter, he lodged the FIR.

- 16. PW6 in cross-examination stated that there are lots of houses near his house. There is a grocery shop near his house. He denied the suggestion that due to enmity with the accused he had lodged a false case.
- 17. PW7 Sri Joseph L. Zate, the Investigating Officer, deposed about the investigation conducted in this case.
- 18. In cross-examination, PW7 stated that he found the accused near the Court campus. He had recorded the statement of the witnesses at the place of occurrence, but not all the persons who were present. There were more than 100 persons present in the place of occurrence. He had not recorded the statement of security personnel present in an around the Court complex. Pw 7 also deposed that had not submitted the extract copy of GD Entry alongwith the charge sheet. He does not know if the accused was

working in a Tea-stall. He had not seized the wearing apparel of the victim which she was wearing at the time of occurrence. The victim had refused her medical examination.

- 19. Now, Section 7 of the POCSO Act, provides that whoever, with sexual intent touches the vagina, penis, anus or breast of a child, or makes the child touch the vagina, penis, anus, or breast of such person or any other persons, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- 20. So far as the evidence of the victim girl is concerned, she is aged about 11 years. She is studying in class-VII. Her evidence is unequivocal in terms of the chain of events. The narration of the events as it happened has been described vividly. The victim, who was searching for her mother, was first misdirected by the accused to go to a place falsely inducing her to believe that her mother had gone to that particular direction. When the victim proceeded to that direction, the accused grabbed her, fell her on the ground and then attempted to remove her under-garments. The examination-in-chief of the victim, is found to be cohesive and believable. Now, even though the defence has suggested motive of enmity but no circumstances or any other materials have been elicited from the prosecution witnesses as to why the victim would falsely implicate the accused.
- 21. Admittedly, there are no eye-witnesses to the incident except the victim herself. However, since the victim is found to be believable the onus, in view of Section 29 of the Act, would shift on

the accused to establish by cogent evidence as to why the proscution evidence, with respect to the charge against him, should be discarded. The cross-examination of the victim or for that matter any other witnesses has not been able to belie the testimony of the victim hence, the heavy onus placed on the accused stands not discharged.

- 22. In view of the definition provided for sexual assault in Section 7 of the POCSO Act, the act of accused in pulling the victim, felling her and trying to remove her under-garments, falls within the ambit of sexual assault and the sexual intent is explicitly gathered from the circumstances. The point for determination is thus answered in affirmative.
- 23. I have heard the accused on the point of sentence. He submits that he has spent about 10 months in jail as under trial prisoner hence he may sentenced for the period already undergone.
- 24. The offence under Section 8 of the POCSO Act attracts a punishment which shall not be less than three years but which may extend to five years. The victim was only 11 years old at the time of occurrence. Had the victim not taken a strong evasive action she could have been easily overpowered by the accused but for the good fortune an aggravated assault on the victim was averted. The only mitigating circumstance appearing in favour of the accused is his conduct during trial. He attended the Court diligently during trial. Hence, considering all aspects and the facts of this case, I believe a sentence of three years of rigorous

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imprisonment would meet the ends of justice.

**ORDER** 

Accused Md. Mofizul Sheikh is convicted of the offence under

Section 8 of the POCSO Act. He is sentenced to suffer rigorous

imprisonment for three years and to pay a fine of Rs 1000/- in

default to suffer further imprisonment for 2 months.

A recommendation is also made to the District Legal Service

Authority, Kokrajhar, for considering payment of adequate

compensation to the victim under Section 357A CrPC.

A free copy of the judgment be furnished to the accused.

A copy of the judgment be also furnished to Sri Ratan Jhangkar

Borgoyary, Legal Aid Counsel.

A copy of the judgment be also sent to District Magistrate,

Kokrajhar.

Given under the hand and seal of this Court

Dictated by: -

Addl. Special Judge(FTC), Kokrajhar, Addl. Special Judge(FTC), Kokrajhar

# <u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 FIR

Exhibit-2 Sketch Map

Exhibit-3 Charge sheet

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Victim

P.W.2 Ayesha Bibi

P.W.3 Abu Bakkar Ali

P.W.4 Mother of victim

P.W.5 Md. Romis Ali

P.W.6 Father of victim

P.W.7 Sri Joseph Z. Zate

4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Addl. Special Judge(FTC), Kokrajhar