## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

**SPECIAL (POCSO) CASE NO.** 68 OF 2018 :-

> (Under Section 6 of the POCSO Act, arising out of G.R. Case No. 2942/18)

**Present** :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

**Prosecutor** :- State of Assam

-vs-

**Accused** Sri Santi Dhar,

Son of late Jogendra Dhar, Resident of Thelamara Rohinibil, Police Station – Thelamara Dist:- Sonitpur, Assam

01/10/2018 Date of framing Charge

Date of Recording Evidence 14/11/2018

Date of examination of accused u/s 14/11/2018

313 Cr.P.C

Date of Argument 14/11/2018

Date of Judgment 14/11/2018

Counsel for the Prosecution Mr. Munin Chandra Baruah,

**Special Public prosecutor** 

Sonitpur.

Counsel for Accused :- Mr. P. Biswas, Advocate.

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### **JUDGMENT**

- **1.** In this case accused Sri Santi Dhar is put for trial for allegation of charge under Section 6 of the POCSO Act, 2012.
- 2. The factual matrix of the case, according to the FIR, is that at about 9.30 a.m. of 23-07-2018, while the minor daughter of the informant, who is aged about 7 years, went to the shop of the accused to buy some materials, accused raped his daughter. On being enquired the accused, the accused confessed his guilt before the local public. Hence, this prosecution case. The ejahar was filed by Sri Gagan Chandra Das, before the O/C of Thelamara Police Station on 25-07-2018.
- **3.** On receipt of the ejahar, the Officer-In-Charge of Thelamara Police Station registered a case being Thelamara P.S. Case No. 136/18 u/s 6 of the POCSO Act. After completion of usual investigation, the O/C Thelamara Police Station sent up the accused for trial by filing charge sheet u/s 6 of the POCSO Act against the accused Sri Santi Dhar.
- **4.** On being appeared the accused before this Court, after hearing both parties, framed charge under section 6 of the POCSO Act, 2012 against the accused Sri Santi Dhar and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- To substantiate the case, prosecution examined three numbers of witnesses i.e. the complainant/father, mother of the victim and the victim. After completion of prosecution evidence, the learned counsel for the accused submitted to close the evidence on the ground that none of the witnesses even the victim and the complainant failed to reveal any ingredients of alleged section of law against the accused. Learned Public Prosecutor also conceded.
- **6.** On scrutiny of the record, particularly the statements of the witnesses, it appears that the victim and her parents no way supported

the prosecution case against the accused as alleged. So, considering the aforesaid evidence even if examined the other witnesses the case of the prosecution could not develop. Considering these aspects, prosecution evidence is closed. Speedy trial is the fundamental right of the accused person. Accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegations and declined to adduce defence evidence.

- **7.** The point for decision in this case is that -
  - (1) "Whether on or about 9.30 a.m. of 23-07-2018, at Ruhinibil under Thelamara Police Station, the accused committed penetrative sexual assault on the victim (7 years of age) and thereby committed an offence punishable under section 6 of the Protection of Child from Sexual Offences Act?

### Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1 Sri Gagan Das, the complainant of this case and father of the victim stated that at the relevant time his victim daughter was about seven years old. The occurrence took place on 23-7-18 at about 9:30 a.m. The accused has a grocery shop situated at their village. At the relevant time his daughter/victim went to the shop of the accused to bring something. Front side of door of the accused was closed but the backside door was open. So his daughter went to purchase material from the back side door. After purchasing "hajmula" from the shop of the accused she attempted to return home. During that time some of the mustard oil suddenly fell upon the clothes of his daughter. Then she raised alarm. Hearing alarm, her mother came and called her. Thereafter his victim daughter reported the incident to them. During that time public gathered there. They suspected the accused that he may attempt to commit rape on his daughter. Then he lodged the FIR. The FIR was written by scribe namely Enamul. Ext.1 is the FIR wherein

Ext.1(1) is his signature. After instituting the case statement of his victim daughter was recorded by police and also sent to hospital for medical examination. His victim daughter was also sent to court for recording her statement U/s.164 of Cr.P.C.

In cross-examination, he admitted that the FIR was lodged after 2/3 days of the occurrence. Initially they did not like to file FIR but at the instigation of some students union they lodged the FIR. His daughter did not report him any of the incident. His victim daughter made statement before Ld. Magistrate as tutored by local public and her mother. He does not have any allegation against the accused because he knows the accused for last fifteen years and therefore he does not have any objection if the accused is enlarged on acquittal.

10. PW 2 Smt. Swapna Das, mother of the victim girl, stated that she knows the accused who is the owner of a shop. The occurrence took place on 23-07-18 at about 9:30 a.m. In the morning time her victim daughter was sent to shop for purchasing some materials. The shop is situated at a little bit distance from their house. When her daughter went to the shop of the accused, the front side door of shop of the accused was closed so she went to purchase material from the back side door of the shop. Her daughter hurriedly returned by taking some "hajmula. The accused accidentally fell down some mustard oil upon her clothes. So her daughter started crying and returned home by running. On hearing hulla local people gathered there. They suspected the accused involving in attempt to commit bad act. She knows that the accused never did any misdeed to her daughter. At the instigation of local public, her husband bound to file FIR. Thereafter statement of her daughter was recorded by police and also her statement was recorded through Ld. Magistrate. Her statement was also recorded by Ld. Magistrate U/s.164 of Cr.P.C. Ext.2 is her statement U/s.164 of Cr.P.C. wherein Ext.2(1) and Ext.2(2) are her signatures.

In cross-examination, she admitted that she never suspected the accused any of the alleged occurrence. At the instigation of local public

her husband bound to file the FIR. The local public instigated them to make such statement before Ld. Magistrate and accordingly she made statement U/s.164 of Cr.P.C. She does not have any grievance against the accused. She does not have any objection if the accused is enlarged on acquittal.

11. PW 3, the victim, who was examined after making enquiry to test her intelligence and ability to give rational answers, has stated that she knows the accused. He is their neighbour. He has a grocery shop. The incident took place about 2/3 months ago. At the relevant time she went to the shop of the accused to purchase some "hajmula". When she reached the shop she found the front door of the shop was closed. So she went to the shop of the accused through back side. During that time the accused was there at his shop. Then she purchased three "hajmula" at the consideration of Rs.3/-. During that time her mother called her. During that time the accused was measuring mustard oil and suddenly some of the mustard oil fell on her clothes. Then out of fear she ran to her house by crying and reported the matter to her mother and father. On hearing hulla people gathered there. Thereafter her father filed this case. As reported by her mother her father filed this case. After institution of the case, police recorded her statement and then examined her through doctor. She has also taken to court for recording her statement U/s.164 of Cr.P.C. Ext.3 is her statement U/s.164 of Cr.P.C. wherein Ext.3(1), 3(2), 3(3) are her signatures.

In cross-examination, she admitted that she visited the shop of the accused quite off and on. The accused never told her any slang language. When she went to the shop of the accused he was measuring mustard oil and suddenly some of the mustard oil fell into her frock. Out of fear she was crying and ran towards house. The accused never made any misdeed to her. Local people and some of the student tutored her what to say before Ld. Magistrate. They have also tutored and asked her mother what to say before Ld. Magistrate. Accordingly they made such statements as tutored by the said local public. In fact the accused

never open her pant. Today what she has stated before this court is true statement. The accused never misdeed her. He even not took her into his lap. She made statement at her free will without any fear.

- **12.** These much is the evidence of the prosecution case. Defence plea is total denial while his statement was recorded u/s 313 of Cr.P.C.
- **13.** Before entering into the record, I am inclined to see what is the ingredients of section 5 of the POCSO Act to convict the accused u/s 6 of the POCSO Act.
- **14.** To prove the charge under section 6 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

#### Section 5- sexual assault-

- **" 5. Aggravated penetrative sexual** assault.-(a) Whoever, being a police officer, commits penetrative sexual assault on a child-
- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces

commits penetrative sexual assault on a child-

- (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or
- (iv) where the said person is known or identified as a member of the

security or armed forces; or

- (c) whoever being a public servant commits penetrative sexual assault on a chil d; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private. commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.-When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which-
- (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
- (iii) inflicts the child with Human Immunodeficiency Virus or anyother life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (1) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (0) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has -teen previously convicted of having committed any offence

under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

This clause defines the offence of aggravated penetrative sexual assault. It provides that a person is said to commit aggravated penetrative sexual assault, if he-

- (a) being a police officer, commits penetrative sexual assault on a child -(i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or (iii) in the course of his duties or otherwise; or (iv) where he is known as, or identified as, a police officer; or
- (b) being a member of the armed forces or security forces commits penetrative sexual assault on a child -(i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) being a public servant commits penetrative sexual assault on a child; or
- (d) being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or
  - (q) commits gang penetrative sexual assault; or
- (h) commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

- (i) commits penetrative sexual assault causing grievous hurt or causing injury t6 the sexual organs of the child; or
- (j) commits penetrative sexual assault upon a child which (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or
- (k) commits penetrative sexual assault on a child taking advantage of his mental or

physical disability; or

- (I) commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) commits penetrative sexual assault on a child below twelve years; or
- (n) being a relative of the "child through blood or adoption or marriage or guardianship or in foster care, or having a domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) commits penetrative sexual assault on a child knowing the child is pregnant; or
  - (r) commits penetrative sexual assault on a child and attempts to murder the child; or (s) commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this

Act or any sexual offence punishable under any other law for the time being in force. (Notes on Clauses).

**15**. In this type of case, the statement of the victim is much more relevant including the other witnesses. In the instant case, it appears that PW 2 Smti Swapna Das who is the mother of the victim who deposed that at the relevant time her daughter went to the shop of the accused, as the front side door of the shop of the accused was closed so she went to purchase material from the back side door of the shop. During that time the accused was busy in measuring mustard oil but suddenly some mustard oil fell into her daughter's clothes and out of fear she came running and crying. On hearing hulla local people gathered there. They suspected the accused involving in attempt to commit bad act. Similarly, the father of the victim PW 1 stated that initially they did not like to file FIR but at the instigation of some Students Union, they lodged the ejahar. His daughter did not report any of the incident to him. Her daughter made statement before the learned Magistrate as tutored by local public and her mother. He does not have any allegation against the accused because he knows that the accused for last fifteen years and therefore, he does not have any objection if the accused is enlarged on acquittal.

Similarly, victim PW 3 who was examined after making enquiry to test her intelligence and ability to give rational answers stated similar story as stated by her mother and complainant. She stated that at the relevant time she went to the shop of the accused to purchase some hajmula. When she reached the shop she found the shop of the front door was closed so she went to the shop of the accused through back side. During that time the accused was there at his shop. Then she purchased three "hajmula" at the consideration of Rs. 3/-. During that time her mother called her. During that time accused was measuring mustard oil fell on her clothes. Then out of fear she ran to her house by crying and reported the matter to her mother and father. On hearing hulla people gathered there. As reported by her, her father filed the

case. After institution of the case, police recorded her statement and then examined her through the doctor. In cross-examination, she admitted that she visited the shop of the accused quite off and on. The accused never told her any slang language. When she went to the shop of the accused he was measuring mustard oil and suddenly some of the mustard oil fell into her frock. Out of fear she was crying and ran towards house. The accused never made any misdeed to her. Local people and some of the student tutored her what to say before Ld. Magistrate. They have also tutored and asked her mother what to say before Ld. Magistrate. Accordingly they made such statements as tutored by the said local public. In fact the accused never open her pant.

**16.** Therefore, in view of the aforesaid evidence of victim, complainant/father and mother of the accused, I have no hesitation to hold that the prosecution has failed to prove any of the ingredients of alleged charge against the accused. Under such circumstances, I acquit him and set him at liberty forthwith.

Given under my Hand and Seal of this Court on this the  $14^{\rm th}$  day of November, 2018.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

# **APPENDIX**

# **Prosecution Witness**

1. Prosecution Witness No.1 :- Sri Gagan Chandra Das, complainant.

2. Prosecution Witness No.2 :- Smti Swapna Das

3. Prosecution Witness No.3 :- Victim Miss "X".

# **EXHIBITS.**

Exhibit 1 : Ejahar

Exhibit 1(1) : Signature of the complainant Gagan Ch. Das.

Ext. 2 : 164 Cr.P.C. statement of Smti Swapna Das,

Ext. 2(1) & 2(2): Signatures Smti Swapna Das,

Ext. 3 : 164 Cr.P.C. statement of the victim girl.

Ext. 3(1) to 3(3): Signatures of victim girl.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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