IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL POCSO CASE NO. :- 26 of 2018

(Under Section 18 of POCSO Act, arising

out of G.R. Case No. 460/18)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur :Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1. Sri Ranjan Thapa

Son of Late Kul Bahadur Thapa,

Resident of Chariduar Police Station — Chariduar Dist. :- Sonitpur, Assam.

Date of framing Charge :- 11-05-2018.

Date of Recording Evidence :- 25-07-2018, 04-09-2018

& 24-09-2018.

Date of examination of accused u/s

313 Cr.P.C

29-11-2018

Date of Argument :- 13-12-2018

Date of Judgment :- 15-12-2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- Mrs S. Begum, Advocate.

JUDGMENT

- **1.** In this case accused Sri Ranjan Thapa is put for trial for allegation of charge u/s 18 of POCSO Act.
- 2. The prosecution case according to the FIR in brief is that on or about 4.30 p.m. of 2nd February, 2018 the accused who belongs to the same village of the informant, took informant's minor daughter, attempted to commit penetrative sexual assault. While the son of the accused witnessed the incident informant's victim daughter was save somehow. Hence, this prosecution case. The ejahar was filed by the informant Ashiram Lama on 02-02-2018 before the O/C of Chariduar Police station.
- **3.** On being receipt the ejahar, O/C Chariduar Police Station registered a case being Chariduar P.S. Case No. 34/18 u/s 376(1)(1)/511 of IPC read with section 18 of the POCSO Act. After completion of usual investigation, the O/C Chariduar Police Station sent up the case for trial against the accused Ranjan Thapa under section 8 of the POCSO Act.
- **4.** On being appeared the accused person before this Court, after commitment of the record, after hearing both parties, framed charge u/s 18 of the POCSO Act against the accused Ranjan Thapa. Particulars of the charge were read over, explained to the accused to which he pleaded not quilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined as many as 6 numbers of witnesses. After completion of prosecution witnesses, statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.
- **6.** I have also heard the argument put forward by the learned counsels of both sides.
- **7.** The points for decision in this case is that -

(1) "Whether on or about 4.30 p.m. of 02-02-2018 at village Chariduar under Chariduar Police station, the accused attempted to commit any

offence punishable under the POCSO Act or to cause such an offence to be committed and in such attempt, does any act towards the commission of the offence, on Miss "X", aged about 12 years, and thereby committed an offence punishable under section 18 of the POCSO Act?

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1, Ashiram Lama, who is the complainant of this case. He is not an eye witness to the occurrence. He stated that he knows the accused. The incident took place in the month of February, 2018 at about 4.30 p.m. Victim is his daughter. At the time of incident she was about 12 years. After the incident victim came by crying, told him that she went to her Uncle (Bordeuta)'s house to watch TV. In the house of the accused (her uncle) she was taken by her uncle to another room and latched the door. Then she started to crying and ran towards their home. Then he filed the ejahar. Ext. 1, the ejahar was written by one scribe without his instruction. The scribe has written the ejahar at his own will. After writing the ejahar he has put signature. Ext. 1(1) is his signature. His daughter was medically examined by a doctor and she was sent to the learned Magistrate for recording her statement. Thereafter, his victim daughter was given custody to him

In cross-examination, he admitted that prior to the incident his victim daughter went to the house of the accused to watch TV in several times. On arrival at home he came to know that the accused did not allow to watch Kartoon in TV and shut the door from outside.

10. PW 2 Smti Jyosoda Thapa turned hostile. The unhostile portion of her evidence is that he knows the accused Ranjan Thapa. The incident took place in the month of February, 2018 at about 4.30 p.m. Victim Miss X is her sister-in-law. At the time of incident she was about 12 years. After the incident victim came by crying, told her mother that she went to her Uncle (Bordeuta)'s house to watch TV.

In cross-examination by defence, she admitted that the house of the accused is near their house. Prior to the incident, victim used to visit the house of the accused guite off and on.

11. PW 3, the victim Miss "X" stated that she knows accused Ranjan Thapa. They called him as "Bordeuta". The incident took place about 5/6 months ago. On the day of incident as usual she went to the house of Ranjan Thapa to watch Cartoon at TV. He took her to another room and offered one hundred rupee note, out of fear she started to crying. By opening the door she left the place by crying. Then she met Kumar Thapa and came to her house by crying and reported the matter to her mother and then to her father. Then her father lodged this FIR. Police recorded her statement and examined through the doctor. Thereafter, sent her to the court to record statement u/s 164 Cr.P.C. Ext. 2 is the said statement recorded u/s 164 Cr.P.C. and Ext. 2(1) and 2(2) are her signatures.

In cross-examination, she admitted that usually she went to the house of the accused to watch TV as she likes to see Cartoon. She made statement before the learned Magistrate voluntarily.

12. PW 4 Sri Sumit Bhuyan, who recorded the statement of the victim u/s 164 Cr.P.C. stated that on 03-02-2018 he was posted as Sub-Divisional Judicial Magistrate, Sonitpur, Tezpur and on that day in reference to Special POCSO Case No. 26/18, a minor girl namely, Miss Bishnumaya Lama, aged about 12 years, D/O Sri Ashiran Lama of village MS Road, Chariduar under Chariduar PS was produced before him for recording her statement. The said victim was escorted and identified by WHG Jamini Das. He recorded the statement u/s 164 Cr.P.C. of the victim girl in court Chamber. At the time of recording her statement other than him and her none was present there. The victim made statement voluntarily. After recording her statement, he has read over the contents of the statement and on acceptance she put signature thereon. Ext 2 is the statement of said victim Miss X and Ext. 2(2) is his signature. Ext. 3 is her order dated 03-02-2018 and Ext.3(1) is his signature.

13. PW 5 Sri Kumar Thapa, stated that he knows accused Ranjan Thapa. Victim is his neighbor. At the relevant time she was about 12 years. The incident took place in a day in the month of February, 2018. At the relevant time he was at home. Accused Ranjan Thapa is his father. He heard hulla in another room where the victim raised alarm. In that room his father was also there. Then he entered in the said room and saw victim girl and his father. When he entered into the room his father/accused left the room. Thereafter, a gathering took place. Local public apprehended his father and took him to the police station.

In cross-examination he admitted that at the relevant time he was on leave from his duty of MKM Supermarket, Bengalore. There are three rooms in their house. In his house there are six members. Victim used to visit their house quite off and on to watch TV. At the relevant time he was in sleeping in another room. On hearing hulla, he came to the room where hulla took place. He has not asked anything to his father. He left the place. During that time some of the persons playing Ludu outside the house. After about one hour he came back to his house and came to know about the matter that his father has taken to the police station.

14. PW 6 Sri Dwijumoni Sarmah stated that on 02-02-2018 he was posted as SI of police at Chariduar Police station. On that day, the then O/C on receipt of a written ejahar filed by one Ashiram Lama and registered a case being Chariduar PS Case No. 34/18 u/s 376(2) (1)/511 of the IPC r/w section 8 of POCSO Act and entrusted him for investigation. He recorded the statement of complainant and victim at the Chariduar Police station as they are willing to give statement on that very day at the police station in presence of woman constable Dimpi Hazarika. As there was a night so he did not visit the place of occurrence immediately, so next day, he visited the place of occurrence and prepared the sketch map. Ext. 4 is the sketch map and Ext. 4(1) is his signature. Ext. 1 is the ejahar and Ext. 1(2) is the signature of the then O/C Chariduar PS Satish Sahoo. On the next day of the day of filing the ejahar, he has sent the victim girl for medical examination and sent to the learned court for recording her statement u/s 164 Cr.P.C. On the next day of the day of filing the ejahar, he has also arrested the accused and

forwarded him to the court. He has also collected the medical report of the victim. In the medical report doctor reported that on examination the doctor found no any external injury. After completion of investigation, he filed chargesheet against the accused Ranjan Thapa u/s 8 of POCSO Act. Ext. 5 is the said chargesheet and Ext. 5(1) is his signature.

He confirmed the statement of Josoda Thapa, who stated before him that "accused called Bishnumaya to his house to watch TV, he took victim to another room, latched the door, pressed her chest, then she came out by crying, then my husband Kumar Thapa arrived at the place and seen the incident, then my father-in-law fled away from the place of occurrence"

Ext. 6 is the case diary of Chariduar PS Case No. 34/18 and Ext. 6(1) is the relevant portion of statement of witness Josoda Thapa and Ext. 6(2) is his signature.

In cross-examination he admitted that he has not recorded the statement of the scribe of the ejahar. He has recorded the statement of witnesses Kumar Thapa and Josoda Thapa at the police station on the day of incident at about 7.30 p.m. Victim did not made statement before him that accused offered or given Rs. 100/- to her.

- **15.** These much is the evidence of the prosecution case.
- **16.** I have heard the arguments of learned counsel of both sides.
- 17. Learned counsel for the accused submitted that the prosecution has failed to prove the case beyond any reasonable doubt. Firstly, the victim herself did not state nowhere in her statement that accused committed any sexual assault on her. Besides, she also did not state anything about the attempt to cause sexual assault by the accused. Secondly, other than victim, none was eye witness to the occurrence. Though the prosecution story stated such that on being seen the son of the accused, the accused left the victim, but his son PW 5 Kumar Thapa did not say so. Thirdly, the statement made by the victim before this court is contradictory of her own statement made before the learned Magistrate u/s 164 Cr.P.C.

- **18.** On the other hand, learned Public Prosecutor submitted that the prosecution has ably prove the case beyond any reasonable doubt as such, the accused is required to be convicted under charged section of law.
- **19.** Keeping in mind the rival submissions advanced by learned counsel of both the parties I am going to dispose the case as follows.
- **20.** Here in this case, the charge framed against the accused u/s 18 of the POCSO Act. To prove the charge u/s 18 of the POCSO Act, the prosecution must prove that –

"To convict the accused section 18 of POCSO Act the prosecution must prove that accused attempted to commit any offence punishable under this act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence."

21. In this type of case, the statement of the victim is utmost important. When the victim did not support the prosecution case it would be futile to discuss the statement of other witnesses. It is again stated that in this case, the victim stated that on the day of incident as usual she went to the house of the accused to watch TV. Accused took her to another room and offered her hundred rupee note, out of fear she started crying and by opening the door she left the place. Then she met Kumar Thapa and came to her house and reported the matter to her parents.

"The term 'attempt' has not been defined in the Indian Penal Code. In the language of Stephen, an attempt to constitute a crime is an act done with an intention to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. In other words, an attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but failing short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime, combined with the doing of some act adopted to, but failing short of, its actual commission. It may be consequently be defined as that which if not

prevented would have resulted in the full consummation of the act attempted."

Therefore, in the aforesaid statement of the victim, it could not reveal that the accused has committed any attempt to victim with intent to sexual assault. According to the victim, as usual she quite off and on used to visit the house of the accused to watch cartoon in TV. On that very day also victim went to the house of the accused to watch TV then accused took her to another room and offered her one hundred rupee note but her statement is silent that accused doing something with attempt to cause sexual assault in any form. Therefore, the statement of the victim is silent as to commission of any attempt to cause sexual assault. Merely, keeping the victim to another room offered her one hundred rupee note cannot be stated to be attempted to commit sexual assault.

The statement of PW 1, the complainant of this case and father of the victim, also reveals no such materials that it is the accused who attempted any form to commit sexual assault to his victim daughter. He clearly stated that at the relevant time, his victim daughter went to the house of the accused to watch T.V. In the house of the accused she was taken by her uncle (accused) to another room and latched the door. His statement is also silent that accused committed any attempt with intent to commit sexual assault to the victim.

22. Learned Public Prosecutor submitted that in the statement made by victim before the learned Magistrate reveals sufficient materials of attempt to commit sexual assault to the victim as she stated before the learned Magistrate that while she went to the house of the accused to watch TV accused took her to another room and closed the room and hand over Rs. 100/- and touched her chest. On being seen by son of the accused, she raised alarm and came out while the accused opened the door. But law is well settled that an accused cannot be convicted on the basis of statement made u/s 164 Cr.P.C., unless, the victim does not states anything in the court as to the alleged offence. The statement u/s 164 Cr.P.C. is used for corroboration and contradictions.

- **23.** As discussed herein above, the victim failed to state any allegation of any attempt to commit sexual assault, therefore, I have no option but to hold that the prosecution has failed to prove the alleged charge against the accused beyond any reasonable doubt.
- **24.** Under such circumstances, accused Ranjan Thapa is acquitted on benefit of doubt from the charge u/s 18 of the POCSO Act and set him at liberty forthwith.
- **25.** The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the 15th day of December, 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:

(R. Hazarika), Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Complainant Ashiram Lama

2. Prosecution Witness No.2 :- Jyosoda Thapa

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

4. Prosecution Witness No.4 :- Sri S. Bhuyan, SDJM, Sonitpur

5. Prosecution Witness No.5 :- Sri Kumar Thapa

6. Prosecution Witness No.6 :- Sri Dwijumoni Sarmah, I.O.

EXHIBITS.

Exhibit 1 : Ejahar

Exhibit 2 : 164 Cr.P.C. statement of the victim.

Exhibit 3 : Order dated 03-02-2018 of SDJM, Sonitpur.

Exhibit 4 : Sketch map

Exhibit 5 : Chargesheet.

Exhibit 6 : Case diary of Charduar PSCase No.34/18.

(A.K. Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR