# IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 34/2018 U/S 12/18 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge,

Barpeta.

**Charge framed on:** 10.05.2018

State of Assam

- Vs -

Ranjit Arjya

Date of Recording Evidence on – 27.02.2019

Date of Hearing Argument on – 27.02.2019.

Date of Delivering the Judgment on – 27.02.2019.

#### Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused----- Mr. Faijur Rahman, Learned Advocate.

#### JUDGMENT

- 1. The prosecution case, in brief, is that, on 19.06.2018 one Subhash Khatriya lodged an ejahar in Barpeta Road P.S. alleging inter alia that his 13 years old sister reading in Class VIII was subjected to sexual harassment by the accused person in the way to her school and on 18-06-2018 at about 7 pm accused trespass into his house accompanied with another unknown youth with a view to take his sister, but the family members caught the accused and handed him over after smothered him. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta Road P.S. case No. 288/18 u/s 448 IPC and section 4/12/18 of POCSO Act and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Ranjit Arjya u/s 448 IPC and section 4/12/18 of POCSO Act with a view to stand trial.
- 4. In due course, when accused entered his appearance in court vide order dated 08-10-2018 all the particulars relating to the case have been

furnished to him as mandated by section 207 Cr.P.C. Thereafter, having heard the learned counsel and on perusal of the record having found a prima facie case charge u/s 12/18 of POCSO Act were framed. The substance of the offences on being read over and explained accused pleaded not guilty and claim trial.

- 5. During the course of trial, the prosecution examined 2 witnesses namely the informant and the alleged victim as PW-1 and PW-2 respectively, but considering the nature of evidence adduce by them giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

# 7. Now point for determination ;-

- .1. Whether on 18-06-2018 at about 7 pm accused committed sexual harassment on the victim as alleged ?
- .2. Whether on 18-06-2018 at about 7 pm accused attempts to commit an offence punishable under this act or cause such an offence to be committed as alleged?

## 8. <u>Discussion, Decision and reasons for such decision</u> :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the prosecution evidence available on record.

- 9. The learned counsel appearing for the State Smti. P. Das submitted that though the prosecution examined 2 witnesses but the court may pass judgment after assessment of evidence as the quality of evidence adduce by them does not justify to proceed further with the case for recording evidence of remaining witnesses.
- 10. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely nothing in the evidence of the prosecution witnesses which constitute the ingredients of the offences u/s 12/18 of POCSO Act. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the offence u/s 12/18 of POCSO Act. As such, the learned counsel prays to acquit the accused person.

- 11. In the context of the submission of the learned counsel appearing for both sides it would be in the fitness of things to refer to section 12 & 18 as defined in the POCSO Act 2012.
- "12. **Punishment for sexual harassment**. Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine."
- "18. **Punishment for attempt to commit an offence** . Whoever, attempts 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 shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence or with fine or with both."
- 12. Now, on perusal of the offences u/s 12 and 18 of POCSO Act and having heard the learned counsels appearing for both sides and on careful perusal of the evidence available on record particularly the evidence of the alleged victim it transpires that she has depose in court contrary to the allegations made in the FIR (Exhibit 1). In Exhibit 1 it was alleged that accused followed her and gave sexual gestures towards her on her way to school and back and also allegedly came to her house accompanied with another person with a view to take her in the odd hours, but in her evidence in court she stated that accused quarrel with her when she visited the market following which case was filed by her brother even though in her statement u/s 164 Cr.P.C. also (Exhibit 2) she has stated that accused disturb her while visiting school alone and also visited her house in odd hours.
- 13. Like wise her brother PW-2 also deposed in similar vein. He even expressed his ignorance what has been written in the FIR (Exhibit 1) as he stated in court that he do not know how to read and write. The evidence of PW-1 & PW-2 are found not credible and trust worthy in any manner.
- 14. The evidence of alleged victim also does not inspire any confidence in the mind of the court regarding commission of the alleged offences u/s 12 and 18 of POCSO Act, 2012 by accused person. Form the evidence on record it transpires that the prosecution fail to establish the age of the alleged victim girl by way of proving her date of birth or by way of any other

credible documents. In the absence of any such documentary proof no inference can be drawn that the girl was minor at the relevant time. In her cross-examination she stated that now she married. So, her evidence is at variance and no conclusive evidence is there as regards her age.

- 15. In the result, this court has no option but to acquit the accused Ranjit Arjya from the charges u/s 12 and 18 of POCSO Act on the ground of benefit of doubt and set him at liberty forthwith.
- 16. The terms of bail bond of accused is extended for a period of 6 (six) months from to-day as provided U/S 437(A) of Cr.P.C.
- 17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let case record be consigned to record room as per procedure.
- 19. Given under my hand and seal of this Court on 27th day of February, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.

### **APPENDIX**

1. The prosecution has examined the following 6 nos. of witnesses:-

PW-1 = is Subhash Khatriya.

PW-2 = is Usha Khatriya, the victim.

2. The prosecution has exhibited only one document:

Ext. 1 = is the FIR

Ext.1(1) = is the signature of informant

Ext. 2 = is the statement of victim girl u/s 164 Cr.P.C.

Ext. 2(1) and 2(2) = are the signatures of the victim girl.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.