CAUSE TITLE POCSO Case No. 69/16

Informant: Sri Ashutos Das,

S/o- Late Sarat Das, R/o- Juria Pukhuri,

PS- Namrup,

District- Dibrugarh.

Accused: Sri Deepak Deb,

S/o- Late Prafulla Deb, R/o- Juria Pukhuri,

PS- Namrup,

District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Sri Ranjit Phukan, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 48/16 G.R. Case No. 1354/16

> > State of Assam

-Vs-

Sri Deepak Deb

Charges: Under Section 8 of the POCSO Act.

Date of evidence on : 24-05-17, 07-09-17 & 11-05-18.

Date of argument : 08-08-18. Date of Judgment : 20-09-18.

JUDGMENT

1) The prosecution case in a narrow compass is that in the month of January, in the year 2014, the victim 'X' went for tuition classes held by Sri Deepak Dev (hereinafter the accused person). When the accused person's house gradually gets vacated during the tuition hours, the accused used to take undue advantage and used to send away the remaining students and administered spiked water. On the relevant day, he groped the breasts and back of the victim. When the victim protested, the accused threatened her with her life. In this manner, the accused used to take undue advantage and outraged the modesty of several students and also threatened them not to divulge about the incidents. The young victims were terrified and they concealed about the incidents. On 28-05-16, at about 4:00 pm, the victim girls met the accused at Juria Pukhuri Tiniali and when they protested about his misbehavior, the public gathered and were apprised about the incidents. A disturbing situation was stirred up and an ejahar regarding this incident was lodged by 'X's father

Sri Ashutos Das. The FIR was registered as Namrup PS Case No. 79/16 under Sections 354/506 of the Indian Penal Code (IPC in short), read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO Act in short) and SI Sremanta Kumar Bharali was endorsed with the investigation.

- 2) The investigating officer (IO in short) embarked upon the investigation. He went to the place of occurrence and prepared the Sketch-Map. He recorded the statements of the witnesses and the victims. He forwarded the victims to the Magistrate for recording their statements. On finding prima facie materials, he submitted Charge-Sheet against the accused person under Section 354/506 IPC, read with Section 8 of POCSO Act.
- 3) On appearance of the accused, copies were furnished and this case was separated into two cases and registered as POCSO Case No. 48/16 and 69/16 vide Order dtd. 22-11-16 passed by my learned predecessor. This case was separated as per Section 219 of the Code of Criminal Procedure (CrPC in short) observing that the alleged offences occurred beyond one year and three offences of the same kind can be jointly tried together. POCSO Case No. 48/16 was split up and separated into two cases, as the time period of the offences extended beyond one year and the offences of the same kind were more than three offences to be jointly charged in the same case. In this case, the victims involved are namely X, Y and X. After hearing both the sides, a formal charge under Sections 8 of POCSO Act, read with Section 354 IPC was framed and read over and explained to the accused. The accused abjured his quilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of eight witnesses including the IO and exhibited several documents and the defence

cross-examined the witnesses extensively to refute the charges.

Submissions:

5) The learned Public Prosecutor Smti. Runumi Devi and Addl. Public Prosecutor Mrs. Sahnaz Akhtar laid stress in their argument that there is clinching evidence against the accused person. There are three victims who brought home the charges leveled against the accused person. The learned defence counsel Sri Ranjit Phukan laid stress in his argument that the age of the students does not support that they were minors. There are no supporting documents to prove the age of the victims. No criminal force or assault can be attributed to the accused. The date and time of the occurrence was in the year 2014 and the FIR was lodged after two years. Other tuition students were not examined. All the witnesses are interested witnesses and so on and so forth. The remaining part of the argument will be discussed at the appropriate stage.

Points for determination:

i. Whether in the year 2014, at Juriapukhuri, the accused committed sexual assault on the victims X, Y and Z?

Decision thereon and the reasons for the decision:

6) The informant's daughter 'X' testified as PW-1 that the accused was her private tutor and the informant is her father. The incident occurred in the month of February or December, 2014. She used to take tuitions for English in the accused person's house to prepare for her HSLC examination which was held in the year 2015. On the evening of the incident, at about 5:00 pm, she went for her tuition classes with her friends. The tuition classes were over at 7:00 am and the accused asked her to wait while her friends went away. He suggested her that he will provide her with question and answers

and so she waited. Then the accused offered her a glass of water and after drinking the same, she became unconscious. When she regained her senses, she charged the accused whether he misbehaved with her, because she was aware of the accused person's loose moral character. The accused replied that he did whatever he felt like doing with her. When she stressed that she will inform her parents about the incident, the accused remarked that her image will be tarnished, because she is a girl. The accused accosted her and insisted that she was a consenting party. She suspected that the accused assaulted her, because she experienced pain on her hands. When she returned home, she was terrified and she did not inform anybody about the incident. After her examination, when she was in Class-XI, there was a discussion amongst their friends and all the girls who were present in the discussion, admitted that the accused misbehaved with them also during the tuition classes. The girls who admitted about the accused person's violation were the victims namely U, 'V, W, Y and Z. She then informed her parents about the incident. They also attacked the accused person and she assaulted him. Then her father lodged an ejahar with the police. The police recorded her statement and forwarded her to the Magistrate to record her statement. Ext. 1 is her statement before the Magistrate and Ext. 1(1) is her signature.

7) Before discussing the cross-examination of the victim, it is pertinent to mention at this stage that the victim could not incriminate the accused person directly. It is true that her evidence depicts that the accused person administered spiked water, but she was unconscious and was not wary whether the accused person assaulted her. She experienced pain on her hands and this left for us to gauge how she could experience pain on her hands.

- 8) This witness was cross-examined in extenso. In her cross-examination, she testified that the accused person is a married man and his family also stays in his house. There are two rooms in his house. She was not certain whether the accused misbehaved with her or not. A few days prior to the incident, she along with W and 'Y' and another girl went to watch Papon's programme in Bihu function at Namrup Bihutoli. W and 'Y' are related to her. She did not meet the accused person in the Bihu function. She denied the suggestion that she attended the Bihu function for the entire night without permission from her parents and the accused rebuked her, because she attended the function without informing her parents. The evidence of PW-1 has been contradicted by her cross-examination and on the cross-examination of the witnesses.
- 9) SI Sremanta Kumar Bharali is the IO and he testified as PW-8 that PW-1 did not mention under Section 161 CrPC that she suspected that the accused person assaulted her, because she experienced pain on her hands. PW-1 also did not mention before him that she went to the tuition class at about 5:00 pm.
- 10) What can be deduced from the cross-examination of PWs-1 and 8 is that she stated before the IO that the accused offered her sedated water after she was left alone after the tuition classes. It is also implied that the accused dared her to inform her parents about his violation and he threatened her that her image will be tarnished if she divulged about what he had done with her and that he did whatever he felt like with her.
- 11) The informant Sri Ashutos Das testified as PW-2 that 'X' and other victim girl W are his daughters. He knows the other victims U, V, 'Y' and Z who resides near his house. The accused is like his brother and he used to teach his daughters since they were in Class-IX and X. They used to go to the accused

person's house for tuition classes. About a year ago, he lodged an ejahar when his daughters and their friends told his wife about the incident. His wife informed him that when his daughter 'X' went for her tuition classes, the accused asked her to wait after the class and he offered 'X' a glass of water and after drinking the same, his daughter became unconscious and the accused misbehaved with her. His younger daughter W informed him that the accused used to display obscene gestures. Then he lodged the ejahar. Ext. 2 is the ejahar and Ext. 2(1) is his signature.

- 12) In his cross-examination, he testified that the police did not record his statement. The name of the scribe is not mentioned in the ejahar and it is also not mentioned in the ejahar that the ejahar was written according to his narrative. His daughter informed him about the incident after two years. The date and time of the incident is not mentioned in the FIR. He also admitted that the accused person's wife and nephew resides in his house. There is only one room in his house. He stated in his cross-examination that before lodgment of the ejahar, his daughter and her friends went to watch Bihu function, but he denied the suggestion that the accused person asked them why they did not take permission from their parents to watch Bihu function for the entire night, then his daughters and her friends protested and assaulted the accused and lodged this case against the accused. One more victim 'Y' is related to him and she is his niece. The other two girls are their friends. The accused is still taking tuition classes, but none except the victim girls have filed this case against him. The accused has around 100 students and he earns his livelihood through tuition classes. He has denied the suggestion that he has lodged this case against the accused on suspicion.
- 13) It is germane to mention at this juncture that 'X' was not aware whether the

accused misbehaved with her, because she was unconscious, but PW-2 was certain that the accused misbehaved with her. Moreover, there is a lapse in the investigation which extends a benefit of doubt to the accused person. The police failed to record his statement as testified by PW-2.

14) It is germane to mention at this juncture that another victim in connection with other case, i.e., POCSO Case No. 69/16, namely, Z testified as PW-3 that she used to attend the tuition classes held by the accused in a private school when she was a student of Class-IX. The informant Sri Ashutos Das is the father of X. The other victims U, V, W, X and Y are all known to her. She met them while she was studying in LP School. While she was attending her tuition classes held by the accused, her younger brother Sri Manash Kundu and another boy also used to attend tuition classes. During tuition classes, the accused used to send her younger brother and his friend to bring pan and in their absence, he used to feel and grope her back. Then she removed his hand, but she did not inform anybody about the act of the accused. One day, when she met him in the field, 'X' informed her that the accused used to misbehave with her. Then the other girls, who met in the field, also disclosed about their experience with the accused person and they also discussed about the behavior of the accused person towards them. Then all the girls confronted the accused in the tiniali when they met him on the same day and there was a commotion and many people assembled. They all confronted the accused about his misbehavior and 'X' and some other people assaulted the accused. Meanwhile, the police arrived and then they went to the police station. 'X's father lodged an ejahar with the police. During investigation, the police recorded her statement. They were also forwarded to the Magistrate for recording her statement. Ext. 3 is her statement and Ext. 3(1) upto Ext.

- 3(3) are her signatures.
- 15) It is pertinent to mention at this juncture that the statement of Z under Section 161 CrPC is consistent to her testimony in the Court. The offence described by Z does not constitute any offence under Section 8 of POCSO Act. The testimony of Z is not clear on which part of her back, the accused rubbed his hands. At the time she testified, she gave her age as 19 years and according to her testimony, she was a student of Class-IX when the alleged incident occurred.
- 16) After scrutinizing the evidence, it is held that when a teacher feels the back of a student, it cannot be said to be an act with sexual intent to fall under the definition of Section 7 of POCSO Act. Moreover, in her cross-examination, she testified that the incident took place when she was a student of Class-VI. It is clear that she revealed about the incident when she completed her higher secondary examination. She also testified in her cross-examination that she used to take tuitions along with a group of students and the accused never groped her back with bad intention. She admitted that a few days before the incident, Angarag Mahanta came for a programme in their place. However, she denied that she attended Angarag's function without permission from her parents and the accused confronted them and rebuked them and so they hatched up a conspiracy against the accused by raking up an old issue and assaulting him in public.
- 17) As far as the evidence of PWs-1, 2 and 3 goes, it is clear that the evidences are too farfetched and sketchy to fasten the guilt on the accused. The evidence does not corner him or close in on him. Moreover, the ejahar Ext. 2 was lodged after two years of the incident. The prolonged delay renders every possibility of fabricating a case against the accused.

- 18) The victim 'Y' testified as PW-4 that she used to attend tuition classes at Rajgarh Rongali Adarkha Vidyapith which was held by the accused person. While attending the tuition classes, the accused held her hand with bad intention, but she did not oppose, because she was terrified by the accused. One day, all the girls met in the field and while discussing, all the girls revealed that the accused used to misbehave with them in the same manner. At that time, while they were in the field, they also met the accused in the tiniali and all the victims U, V, W, X and Z and herself confronted the accused as to why he used to misbehave with them. Meanwhile, many people assembled. Some assaulted the accused and she also hit him. Meanwhile, the police arrived and they went to the police station. The police recorded their statements and the statements of other witnesses. She came to the court and the Magistrate recorded her statement. Ext. 4 is her statement and Ext. 4(1) is her signature.
- 19) The statement of the victim under Section 164 CrPC is not consistent with her testimony in the Court. She did not mention before the Magistrate that the accused touched her hands with bad intention. The victim was a student when she was about to appear her HSLC examination. After scrutinizing her evidence, it is held that when the accused touched her hands, it can be held that his intentions were not inappropriate. Moreover, the incident described by this victim does not fall within the description of Section 7 of POCSO Act. She had admitted that the complainant is her uncle (Moha).
- 20) The other victim 'W' testified as PW-5 that the informant is her father and the incident occurred a month before her matriculation examination, when she attended the tuition classes held by the accused. She used to attend the tuition classes in the accused person's house in the morning. Before her

examination, the accused, on his own accord, used to visit her house in the evening hours and took tuitions. He used to take tuitions with her alone in a room and her parents used to allow her to take tuitions, in the room, alone with the accused, in order that she may not be disturbed. While taking tuitions in her house and while she was alone in the room, the accused groped her body and held her hands. When she opposed and threatened to inform her parents about his acts, the accused scared her. The accused threatened her that he will spread rumour that she willfully allowed him to grope her body and on being terrified of his threats, she concealed about his inappropriate behavior towards her. Thereafter, the accused continued his tuition classes. In the month of May, 2015, some of their friends met in the field one day and while chatting, the topic about the accused person's inappropriate behavior cropped up and all the girls revealed that the accused misbehaved with them. While discussing, at that time, they met the accused person in the tiniali and then they surrounded him and meanwhile, the police was called and they went to the police station. The police recorded her statement and they were also forwarded to the Court where the Magistrate recorded their statements. Ext. 5 is her statement and Ext. 5(1) and Ext. 5(2) are her signatures.

21) It is germane to mention at this stage that the statement of the victim 'W' under Section 164 CrPC is consistent to her testimony in the evidence. The only discrepancy in this case is that all the victims came up with the allegation after two long years and some victims came up with the allegation after one year. It is not a case where the victim was complicit in order to conceal their own involvement. It is a case where the accused person is alleged to be complicit. It is not fathomable why the victims kept mum for

such a long time and on one fine day, they stoutly came up with this allegation. The victim 'W' is the victim 'X's sister and victim 'Y's cousin. The accused gets the benefit of doubt, because this case came up after a prolonged period of two years and one year. The victim 'X' testified that she was assaulted by the accused in the year 2014, 'Z' testified that she was assaulted when she was a student of Class-'X' and mathematics reveal that she came up with the allegation after four years, while 'Y' testified that the incident occurred before her HSLC examination and the mathematics reveals that she was allegedly molested by the accused about three years ago. Moreover, the cross-examination of the IO as PW-8 reveals that 'Y' did not mention in her statement under Section 161 CrPC that all the victims met in the field and while discussing, the accused person's misdeed surfaced in their discussion and at that time, they saw the accused in the tiniali and they confronted and assaulted him in the tiniali. In this manner, it is clear that the witnesses revealed about the allegation after a couple of years. The crossexamination of 'W' further proceeds that she took tuition classes from the accused since she was a student of Class-V until she was a student of Class-X. If the accused is a man of such loose moral character, why did she continue taking tuition classes for five long years? Moreover, the PW-8's cross-examination reveals that she did not mention under Section 161 CrPC that the accused took her tuition in a separate room alone and then he groped her, but when she threatened the accused to inform her parents, the accused exercised threats that he would inform her parents and that she allowed him to grope her.

22) On scrutiny of the evidence of 'W', it is held that her evidence is replete with contradictions. The discrepancies are that she revealed about the accused

- person's misdeeds after two years. Even if the accused had been complicit, yet due to the prolonged day in informing the incident, not by one, but by six victims, the accused person gets the benefit of doubt.
- 23) Another victim 'U' testified as PW-6 that the alleged incident occurred before her matriculation. The accused used to take tuitions and sometimes, they used to take tuition classes in the school and sometimes, the accused used to take tuitions in her house. On the day of the incident, before her matriculation examination, she was taking tuition classes with the accused in her house, in the evening. At that time, the accused held her hand. So she went outside. As she was scared about the incident, she did not inform the incident to anybody. Thereafter, the accused did not visit her house to take tuitions. One of her friends 'X' informed her about an untoward incident committed by the accused person upon her. At that time, they were in the field and 'X' informed them about the incident and thereafter, all the girls revealed about similar incidents committed by the accused and when they met the accused in the tiniali, the confronted him. The accused was confronted by the girls and the public also gathered and they all assaulted the accused. He was taken to the police station. She also went to the police station and her statement was recorded. She was forwarded to the Magistrate who recorded her statement. Ext. 6 is the statement before the Magistrate and Ext. 6(1) and 6(2) are her signatures.
- 24) After scrutinizing the evidence, it is held that the evidence of this witness does not implicate that the accused is complicit. Holding hand of a girl who is a student is not an offence under the POCSO Act, more so when the victim did not incriminate that her hand was held with inappropriate intention.
- 25) Another witness 'V' testified as PW-7 that she took tuitions under the accused

person before her matriculation examination. The accused used to go to their house in the evening to take tuition classes and one day, while taking tuitions, the accused held her hand. Then she removed his hand and did not react. One day, all the girls met in the field and while chatting, they learnt that the accused person misbehaved with all the girls and at that time, they met the accused in the tiniali and they confronted him and then some people assembled and assaulted him and took him to the police station. She also went to the police station. She was forwarded to the Magistrate who recorded her statement. Ext. 7 is her statement and Ext. 7(1) and 7(2) are her signatures.

- 26) Scrutinizing the evidence of PWs-6 and 7, it is held that their statements under Section 164 CrPC are consistent to their testimony in the Court. However, holding hand does not form an offence under the POCSO Act or under Section 7 of the POCSO Act. PWs-6 and 7 did not describe the offence of the accused. While taking tuition classes, a teacher may hold hand or his hands may brush against the hands of his students. The intention has to be clear so as to fasten the guilt on the accused.
- 27) SI Sremanta Kumar Bharali testified as PW-8 that on 28-05-16, he was posted at Namrup Police Station. On that day, the OC of Namrup Police Station received an FIR from Sri Ashutos Das and registered Namrup PS Case No. 79/18 under Section 354/506 IPC, read with Section 8 of POCSO Act and endorsed him with the investigation. Ext. 2 is the FIR and Ext. 2(2) is the signature of the OC Sri Biswajyoti Sharma. He recorded the statement of the informant in the police station and went to the place of occurrence and prepared the Sketch-Map. Ext. 8 is the Sketch-Map and Ext. 8(1) is his signature. He recorded the statements the victims and forwarded them to the

Magistrate for recording their statements. The accused was already apprehended by the public and kept confined in a shop at Rongali and he went there and forwarded him to judicial custody on the next day. He recorded the statements of the witnesses and finding prima facie materials, he submitted Charge-Sheet against the accused under Sections 354/511 IPC, read with Section 8 of POCSO Act. Ext. 9 is the Charge-Sheet and Ext. 9(1) is his signature.

- 28) His cross-examination has already been discussed while analyzing the evidence of the victims.
- 29) It has already been discussed in my foregoing discussions that the FIR was lodged after two years. The evidence of the witnesses clearly reveal that all the girls got together and slammed this case against the accused. Delay in the lodgment of the FIR in this case, extends a benefit of doubt to the accused person. The accused may have been complicit, but the girls woke up from their slumber after two years. It is true that the girls became more confident to confront the accused when they attained majority. They were terrified to confront the accused earlier. However, due to the prolonged delay in the lodgment of the FIR and due to the contradictions elicited by the defence, the accused gets the benefit of doubt.
- 30) In this case, as the contrary is proved, the presumption under Section 29 of POCSO Act is not tenable.
- 31) The prosecution failed to prove beyond reasonable doubt that the accused committed sexual assault on the victims X, Y and Z.
- 32) The accused is hereby acquitted from the charges under Section 8 of the POCSO Act on benefit of doubt and set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 20^{th} day of September, 2018.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

> > Contd.

POCSO Case No. 69/16 APPENDIX

List of witnesses:

- 1. PW-1 Victim 'X';
- 2. PW-2 Sri Ashutosh Das;
- 3. PW-3 Victim 'Z';
- 4. PW-4 Victim 'Y';
- 5. PW-5 Victim 'W';
- 6. PW-6 Victim 'U';
- 7. PW-7 Victim 'V'; and
- 8. PW-8 SI Sremanta Kumar Bharali.

List of Exhibits:

- 1. Ext. 1 Statement of the victim PW-1 recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Statement of the victim PW-3 recorded under Section 164 CrPC;
- 4. Ext. 4 Statement of the victim PW-4 recorded under Section 164 CrPC;
- 5. Ext. 5 Statement of the victim PW-5 recorded under Section 164 CrPC;
- 6. Ext. 6 Statement of the victim PW-6 recorded under Section 164 CrPC;
- 7. Ext. 7 Statement of the victim PW-7 recorded under Section 164 CrPC;
- 8. Ext. 8 Sketch-Map; and
- 9. Ext. 9 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.