IN THE COURT OF THE SPECIAL JUDGE AT JORHAT

<u>Present</u>: Sri Madhurjya Narayan, LL.M., AJS

Special Judge, Jorhat

SPECIAL CASE NO. 26 OF 2018 (G.R. Case No. 1081 of 2018) Teok P.S. Case No. 148 of 2018

State of Assam

-Versus-

Sri Ranjan Borah, Son of Late Dimbeswar Borah, Resident of Jagdowar Natun Habi Gaon, P.S. Teok,

District-Jorhat. Accused

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Sri Indrajit Kakaty, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 354 [A] OF INDIAN PENAL CODE READ WITH SECTION 12 OF THE POCSO ACT, 2012

Date of Charge : 15-06-2018

Date of prosecution evidence: 12-07-2018; 26-07-2018; 26-09-2018;

& 11-12-2018

Statement of Accused

 Recorded on
 : 05-01-2019

 Date of Argument
 : 03-07-2019

 Date of Judgment
 : 17-07-2019

JUDGMENT

- 1). The prosecution story, in brief, as stated in the ejahar [Exhibit-2] dated 16/04/2018, lodged by Smt. Rupali Mahanta, is that on 15/04/2018, around 4.30 p.m., accused Sri Ranjan Borah showed pornographic videos to her daughter [hereinafter referred as (X) in order to screen her identity] in his mobile phone, placed his hand on her chest and asked her to touch his private part by putting her hand inside his pant. It is further contention of the informant that the victim [X] disclosed about the incident to her only on the next day, i.e., on 16/04/2018, around 2.00 p.m. Hence the case.
- **2).** On receipt of the aforesaid F.I.R. by the Officer-in-charge, Teok P.S., the same was registered as Teok P.S. Case No. 148/2018 under Section 354 [A] of IPC read with Section 12 of The Protection of Children From Sexual Offences Act, 2012, [in short, POCSO Act, 2012] and caused investigation into the same.
- **2 (1)** During the course of investigation, victim's statement under Section 164 of Cr.P.C. was recorded by the learned Magistrate. Police on completion of investigation filed charge-sheet in the case against accused Sri Ranjan Borah under Section 354 [A] of IPC read with Section 12 of The POCSO Act, 2012, vide Charge-sheet No. 77/2018 dated 30-04-2018.
- 3). On production, copies of relevant documents, required as per statutory provision, were furnished to the accused person. Then upon consideration of the materials on record as well as relevant documents and after hearing the submissions of the learned counsel for both sides on the point of consideration of charge, finding ground for presuming that the accused had committed offences under Section 354 [A] of IPC read with Section 12 of the POCSO Act, 2012, my learned predecessor-in-office framed formal charge there-under against him. Accusations of the said charge were read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

- **4).** During the course of trial, **09** [nine] witnesses, including the victim, her mother-cum-informant of the case, on behalf of the prosecution, were examined to prove the charges U/S. 354 [A] of IPC read with Section 12 of the POCSO Act, 2012.
- **5).** Statement of the above named accused was recorded under Section 313 of Cr.P.C. vide order dated 05/01/2019. The accused stated that he had been falsely implicated in the case and pleaded innocence. The accused declined to adduce any witness in his defence.
- 6). I have heard arguments forwarded by Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Indrajit Kakaty, learned Defence Counsel for the accused.
- **6 (i).** During argument, learned Special P.P., Jorhat, submitted that the prosecution established its case against the accused person by adducing credible evidence beyond reasonable doubt and as such, he be dealt with. On the other hand, the learned defence counsel Sri Indrajit Kakaty, submitted that the accused person is totally innocent and he has been falsely implicated. Further, evidence on record fall short to prove the prosecution case against the accused person and as such, he be acquitted.
- 7). Now the points for determination before this Court are as follows:-Whether on 15/04/2018, around 4.30 p.m., at Jagdowar Natun Habi Gaon, under Teok P.S., above-named accused person:
 - i. Showed the victim [X], vulgar/pornographic videos in his mobile phone, touched her breast and asked her to touch his private part?
 - ii. Committed sexual harassment upon the victim [X], who was a minor girl at that time?

DISCUSSION, DECISIONS AND REASONS THEREOF:

- 8). Prosecution examined the **victim** [X] as **PW-1**. She deposed that at the time of the incident, she was at her house alongwith her elder brother, elder sister and her mother, i.e., the informant/PW-2. That on the relevant day, accused person came to their house around 4.00 p.m., and showed her pornographic videos by telling her that he would show her music videos of Zubeen. That she then went inside the room of her grandfather and accused also followed her and he asked her to put her hands inside his pant. That she narrated the incident to her mother/PW-2, i.e., the informant, only on the next day.
- **8 (i).** During cross-examination, PW-1 stated that at the time of the incident, her elder brother, elder sister, mother, her grandfather and other family members were present at the house and they were watching television at the front side of the house. That they have got three rooms in total. That she alongwith the accused person were waiting at the step and the latter showed her the pornographic videos outside the house.
- **9). PW-2/Smt. Rupali Mahanta**, is the informant and mother of the victim/PW-1. She deposed that at the time of the incident, she was at her house, whereas the victim was at the house of her grandfather, where PW-1 used to reside since her childhood, which is situated about 2/3 houses away from her house. That on the day of the incident, PW-2 saw the accused person and his family members going to the house where the victim was residing. That seeing her daughter playing, PW-2 asked her to go inside the house. That on the next day of the incident, the victim went to her house and told that when she, i.e., the victim, had asked the accused person for his mobile phone to see videos of Zubeen, he instead showed her pornographic videos. That the victim further told that when she entered into the room of her grandfather, accused person followed her and asked her to put her hand inside his pant.

- **9 (i).** During cross-examination, PW-2 stated that when the victim asked for the mobile phone from the accused person, at that time his wife was sitting inside the room.
- **10). PW-3/Smt. Krishna Mahanta** is the aunt of the victim, latter being the daughter of her husband's elder sister. That on the next day of the incident, in the month of Bohag, PW-3 came to know from the victim/PW-1 about the incident and she was with her mother.
- **10 (i).** During cross-examination, PW-3 stated that she cannot say the exact date, time and place of the incident.
- **11). PW-4/Smt. Charu Mahanta** is the grandmother of the victim. She deposed that on the next day of the incident, victim/PW-1 informed her that on the previous day, the accused person came to their house and put his hand on the chest of the victim and also opened the zipper of his pant and showed her obscene videos in his mobile phone.
- **11 (i).** During cross-examination, PW-4 stated that the victim narrated the incident, first to them as her mother/PW-2 had gone for work. That the victim/PW-1 was staying at the house of the grandfather alongwith Sri Atul Mahanta and his wife and Sri Atul Das. That Smt. Putoli Mahanta and mother of the victim, came to know about the incident from PW-4.
- 12). It is seen from the evidence of PW-3/Smt. Krishna Mahanta that she came to know about the incident from the victim on the next day and according to PW-4, the victim first narrated the incident to her on the next day, around 10.00 a.m. and mother of the victim, i.e., PW-2, came to know about the incident only from her. However, the victim as PW-1 deposed that she did not narrate the incident to anybody except her mother. PW-2 in the ejahar as well as during her testimony before the court stated that she came to know about the incident from the victim only on the next day of the incident, but did not depose that she came to know about it from PW-4.

- **13). PW-6/Smt. Putoli Mahanta** deposed that the victim is her related granddaughter. That on the day of the incident on 16/04/2018, accused person and his wife visited her house at about 3.30 p.m. and they all had tea. That at that time, the victim was playing and the accused person and his wife left their house. That on the next day, the victim went to her mother's house, which is at a little distance away from her residence. That on that day, while PW-6 was at her house, seeing the accused person going somewhere, on query by her, he told that he was going to the house of the victim. That she found a gathering and she does not know anything about the incident.
- **13 (i).** During cross-examination, PW-6 stated that the victim was staying at their house at the time of the incident and still staying at their house and the victim did not state anything to her.
- **14). PW-7/Sri Atul Das** is the husband of PW-6/Smt. Putoli Mahanta. He deposed that the victim stays at his house and incident occurred on 16/04/2018. That the accused person came with his wife and had Bihu feast and tea together. That at that time, the victim was playing in the courtyard. That the accused person played Bihu songs in his mobile phone and the victim and other girls were dancing. That at that time when he was watching television, the victim came to him playing with a mobile phone.
- **14 (i).** During cross-examination, PW-7 stated that he does not know anything about the incident and the victim did not state anything to him.
- **15). PW-8/Sri Manoj Sadhanidhar** deposed that on the day of the incident, seeing a gathering outside the house of the victim, he called police. That he had met the victim on the date of the incident and she told that the accused person had uttered slang words and shown her obscene videos in his mobile phone. He, however, does not know anything about the incident.

- **15 (i).** During cross-examination, PW-8 stated that before he could call police, some other people informed the police. He also stated that he does not know the exact date of the incident.
- **16).** From the evidence of PW-8, it is seen that the victim had told him that the accused person uttered slang words and showed her obscene videos in his mobile phone. However, the victim as PW-1, did not depose that she narrated the incident to PW-8. As such, evidence of PW-8 on the incident is hearsay and hence, inadmisslible.
- 17). PW-5/Smt. Beauty Bordoloi Borah is the wife of accused person. She deposed that incident took place during Bohag Bihu. That she and her husband on being invited by Smt. Putoli Mahanta/PW-6, went to her house around 4.00 p.m. That when they reached there, at that time Smt. Putoli Mahanta was not present, but her husband/PW-7 was there and the former came after sometime. When they were having tea, the victim girl came with her younger sister and brother. Also at that time, one Sri Debojit Bharali and other people went there. That after staying for sometime, they left the place. That on the next day, police came and seized one mobile phone from PW-5 by Exhibit-3 [seizure-list].
- **17 (i).** During cross-examination, PW-5 stated that about 7/8 persons gathered at the house of Smt. Putoli Mahanta/PW-6 when they went there. That they have got enmity with the family of the victim. That the Material Exhibit-1, i.e., the seized mobile phone, belonged to her husband, i.e., the accused.
- **18).** Now, as per the ejahar [Exhibit-2], incident had taken place on 15/04/2018 around 4.30 p.m. and on the next day, i.e., 16/04/2018, it was lodged when the incident was reported to PW-2, at around 2.00 p.m. by the victim. The informant as PW-2 also reiterated the said facts. During cross-examination, PW-2 stated that they called the accused person after coming to know about the incident. PW-6 also deposed that on the next day of the incident, she had seen the accused person proceeding somewhere and on query by her,

the accused told that he was going to the house of the victim/PW-1. The I.O. Sri Satyajit Borah as PW-9 deposed that on 16/04/2018, as Officer-in-charge, Teok P.S., he received the ejahar [Exhibit-2]. That prior to that on the same day, around 4.30 p.m., they were informed over phone that public had detained one person, who was found sexually abusing a child. That he alongwith staff then went to the place and took the person in their custody.

- 19). From the above discussion, it is seen that after the victim reported the incident to her mother/PW-2 on the next day, accused person was called to the house of the informant/PW-2 and he was detained by public. Police then took him in their custody from the house of the informant. PW-8/Sri Manoj Sadhanidhar also deposed that he found a gathering outside the house of the victim/PW-1. Prosecution, however, failed to examine any such persons who had detained the accused person at the house of PW-2, from whom it could have been ascertained as to why the accused person was detained. Moreover, PW-2 did not depose that the accused person had been detained at her house prior to the lodging of the ejahar [Exhibit-2], which itself creates a doubt. As per the prosecution case, the accused person showed pornographic videos to the victim in his mobile phone. But, the I.O. as PW-9, during cross-examination, stated that he could not take out the print of the videos as it had been deleted. That he did not send the mobile phone to FSL, Guwahati, for recovering the stored data, and thus it is a serious lapse on the part of the prosecution.
- 20). With regard to the place of occurrence, the victim as PW-1 deposed that at the time of the incident, she was at her house and that her elder brother, elder sister and mother/PW-2, her grandfather and other family members were present at the house. However, as per the evidence of PW-2, incident had taken place at the house of the grandfather of the victim, where she used to reside since her childhood days. PW-2 also deposed that at the time of the incident, she was at her house, which is about 2/3 houses away from the house of the grandfather of the victim. Moreover, as per the deposition of victim as PW-1, the accused person showed her pornographic videos outside the house and then followed her inside the room of her grandfather. Under the circumstances, the

Sketch Map [Exhibit-4] should have clearly depicted the place where the incident had taken place. But the I.O. as PW-9 during cross-examination, stated that he has not given the details of the rooms and where the incident had taken place, which is also a serious loophole on the part of the prosecution. Moreover, as per the Sketch Map [Exhibit-4], place of occurrence is not the house of PW-6, which is not in conformity with the prosecution case.

- Learned counsel for the accused person submitted that due to previous enmity, the instant case has been lodged against the accused person out of grudge. The accused person in his examination under Section 313 of Cr.P.C., stated that father of the victim was his driver, who had caused an accident to his vehicle and for repairing the same, he had to spent Rs. 18,000/-[Rupees Eighteen Thousand], out of which he asked the father of the victim to pay at-least Rs. 9,000/- [Rupees Nine Thousand], but instead of paying the amount, he lodged the instant case through his wife/PW-2. That he entered into quarrel with him when he demanded the money. Now PW-1, i.e., the victim, during cross-examination stated that they do not have good terms with the accused person. That her father did not work for the accused person. However, PW-8/Sri Manoj Sadhanidhar, during cross-examination, stated that the father of the victim was an employee of the accused.
- PW-2, i.e., the informant, during cross-examination stated that they entered into a compromise with the accused after one month of the incident. That she and her husband and one Sri Munukon Borah, Government Gaonburha, brother and wife of the accused person were present at the time of the compromise. That the agreement was executed at the house of the brother of her father-in-law. However, PW-2 in her examination-in-chief, remained silent about such compromise entered in between them. From her cross-examination also, it cannot be ascertained over which matter, there was the compromise. Sri Manoj Sadhanidhar/PW-8 during cross-examination stated that prior to the incident, accused person lodged a case against the family members of the victim and to settle that case, he also went to the house of the accused person. The evidence of PW-8 accordingly points to the conclusion that the compromise

entered into was not in connection with the incident. The I.O./PW-9 also did not depose anything with regard to the said compromise. Moreover, prosecution failed to examine the husband of the informant, one Sri Munukon Bora and the Government Gaonburha, who as claimed by PW-2, were present at the time of the compromise. Failure on the part of the prosecution to examine these witnesses is a loophole on its part and it raises a presumption under Section 114 (g) of Indian Evidence Act, 1872, "that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it".

- 23). Although prosecution may not be required to prove its case beyond reasonable doubt in cases under POCSO Act, 2012, but the commission of offence has to be proved by the prosecution in such a way as a reasonable person would believe it to happen, before shifting the burden to the accused person. In the case in hand, prosecution by its evidence even failed to raise a reasonable probability of the offence being committed, so as to shift the onus to the accused person.
- **24).** In the light of the discussions so made hereinbefore, it is held that the prosecution failed to prove its case against the accused person beyond reasonable doubt and as such the accused deserves the benefit of doubt. Accordingly, accused person namely Sri Ranjan Borah is entitled to acquittal on benefit of doubt and be set at liberty forthwith.
- **25).** Bail bond of the accused person shall remain in force for a period of **06 [six]** months as per provision of Section 437-A Cr.P.C.
- **26).** Given under my hand and seal of this Court on this **17th** day of **July 2019**.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

D147_4	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
PW-1	Victim of the case.
PW-2	Smt. Rupali Mahanta, mother-cum-informant of the
	case.
PW-3	Smt. Krishna Mahanta, housewife.
PW-4	Smt. Charu Mahanta, grandmother of victim.
PW-5	Smt. Beauty Bordoloi Borah, wife of accused Sri
	Ranjan Borah.
PW-6	Smt. Putoli Mahanta, related grandmother of
	victim.
PW-7	Sri Atul Das, grandfather of victim.
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PW-8	Sri Manoj Sadhanidhar, Government Gaonburha.
PW-9	Sri Satyajit Borah, I.O. of the case.
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COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of the victim/PW-1 under Section 164 Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Seizure-list
Exhibit-4	Sketch Map of the place of occurrence with index.
Exhibit-5	Charge-sheet.

MATERIAL EXHIBIT:- Mobile Phone

DEFENCE WITNESSES:- NIL

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)