### **IN THE COURT OF SPECIALJUDGE:: KAMRUP:: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.09/2017

U/S- 448 IPC r/w sec 8 of POCSO Act, 2012

State of Assam

-Versus-

Ramen Roy @ Raben Roy

s/o- Lt. Ramesh Roy

Resident of vill –Jarapara

P.S.-Chhaygaon

Dist- Kamrup, Assam

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

Smti. P. H. Talukdar, Ld. Advocate ------for the accused

Date of evidence: 10.01.2018, 01.06.2018, 09.07.2018, 18.09.2018,

17.11.2018, 01.02.2019 and 27.05.2019

Date of Argument: 11.07.2019, 25.07.2019

Date of Judgment:29.07.2019

## **JUDGMENT**

- The Prosecution case, briefly narrating is that on 29.05.2017 the complainant Sri Arjun Biswas lodged an ejahar alleging that on 23.05.2017 at about 7 a.m, the accused—Ramen Roy @ Raben Roy entered into his house and tried to commit bad act with his minor niece by touching her private parts when she was alone in her house. Hence, this case.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 411/17 U/S 448 of IPC r/w Section 8 of POCSO Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 448 IPC r/w Sec 8 of POCSO Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 448 IPC r/w Sec 8 of the POCSO Act, 2012 against accused—Ramen Roy @ Raben Roy. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 6 ( six ) witnesses. Victim/prosecutrix was examined as Court witness (C.W.1) by prosecution.

#### 5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 23.05.2017 at about 7p.m at village Jarapara under Chhaygaon P.S committed house trespass by entering into the dwelling house of his niece (victim) with intent to sexually assault her and, thereby, committed an offence punishable U/S- 448 of IPC?
- (II) Whether the accused person on the same date, time and place committed sexual assault upon the minor niece of the informant and, thereby, committed an offence punishable U/S- 8 of the POCSO Act, 2012 ?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. I have heard the arguments of both the sides. Ld. Counsel for the accused has been submitted that the accused is falsely implicated and that the accused had come to the house of the victim to bring the handle of the power pump. He further submitted that the accused did not have any sexual intent. Perused the evidences on record very carefully.
- 7. In this instant case, charge has been framed u/s 448 of IPC R/W Section 8 of POCSO Act against the accused. Section 448 of IPC provides for punishment for the offence of house trespass. Now, question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence. Now, Sexual Assault is defined U/S 7 of POCSO Act as "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." Section 8 of POCSO Act prescribes the punishment for the offence u/s 7of the Act.
- 8. Let us go through the evidence of the prosecution witnesses to find out if the offences U/S-448 of IPC R/W Section 8 of POCSO Act are attracted against the accused person or not.

P.W.1, Arjun Biswas is the informant of this case. The incident took place in the year 2017. Prosecutrix is his niece. He deposed that on the date of occurrence while he was in his house, the prosecutrix/victim along with her father—Moni Biswas came to his house and informed him that while the parents of the prosecutrix were absent in their house, the accused came to their house and tried to commit bad act by touching on the private part of the prosecutrix. It was also reported to him that accused tried to forcibly commit bad act. The village people tried to resolve this dispute locally, but it could not be done there. As a result P.W.1 lodged the ejahar after 6 days of the incident. Police recorded his statement. Ext.1 is the printed form of the FIR and Ext. 1 (1) is his signature.

In the cross-examination, P.W.1 denied that he stated before the I/O that while the accused touched the private part of the victim, she was rescued by her parents. This witness stated that the accused is a cultivator by profession and he works with the father of the victim using one power pump jointly.

9. P.W 2, Sri Munindra Biswas is the father of the victim. Informant is his brother-in-law. Prosecutrix is his daughter. He has deposed that on the date of incident, which took place in his house about a year ago, he was away from the house at a little distant. On hearing noise, he reached his house. On his arrival, he saw the accused in his courtyard while his daughter (P.W.1) was brooming there. P.W.1 told him that the accused caught hold of her. As the accused tried to flee away, then P.W.2 caught hold of him and took him to his house. Thereafter, in presence of elderly villagers, the accused was warned not to do such act in future and allowed to go. Then, his brother-in-law lodged the ejahar. This witness disclosed that the age of the prosecutrix at the time of the incident was 13 years.

In his cross-examination, P.W.2 disclosed that he used to water the field by using common water pump set with the accused. He also revealed that on the date of incident, accused went to his house to bring the handle of the water pump. P.W.2 did not know if the accused asked the prosecutrix to hand over the handle of the water pump to him. He did not see the accused touching any part of the body of the prosecutrix.

10. P.W 3 Smti. Champa Biswas is the mother of the prosecutrix (P.W.1). She stated that on the date of incident in the morning hours, she went out from the house to fetch water from one of her neighbour's house. At that time, the prosecutrix was brooming the courtyard. When P.W.3 returned home back after fetching water, she saw the accused holding the hand of her daughter (C.W.1). Then, P.W.1 cried out and told P.W.3 that accused is trying to pull her out from the house. On her arrival, P.W.3 confronted the accused and asked him why he had done this. Then the accused apologized by falling on her feet. At this, P.W.3 slapped him. After that, the accused went away. Thereafter, she with the help of two other villagers brought the accused again to her house and as suggested by her brother, a village 'mel' was called for. But no decision could be taken in the village meeting, so her brother/informant lodged the ejahar. This witness stated

that at the time of incident, the age of the prosecutrix (C.W.1) was 13 years old. P.W.3 disclosed that C.W.1 told her that the accused touched her private parts. P.W.3 disclosed in her cross examination that the house from where she went to collect water is the next door neighbour.

- 11. Pw-4 , Sri Ananda Roy deposed that after 4/5 days of the occurrence, he heard from P.W.1 that the accused caught hold of the victim girl in her house.
- Pw-5, Sri Akshay Biswas deposed that informant is his maternal uncle. Prosecutrix is his own sister. He knows the accused. The incident took place about a year ago at about 7/7.30 a.m. Prosecutrix was 13 years old at the time of occurrence. He stated that the prosecutrix was alone in the house and she was brooming the courtyard while his mother (P.W.3) had gone to fetch water from tubewell. P.W.5 was outside the house. Upon hearing some 'hullah' in his house, he came towards his house and he saw that crowd gathered therein. Then, prosecutrix(C.W.1) told him that while she was brooming the courtyard, the accused came and caught hold of her hand and tried to pull her inside the house and commit rape upon her. She alleged that the accused touched various parts of her body. At that time, P.W.5 saw the accused in the courtyard. But, subsequently accused went away. His uncle lodged the ejahar. Police recorded his statement.
- 13. P.W.6, S/I Sri Kapil Pathak is the Investigating Officer in this case. He deposed that on 29.05.2017, he was serving as 2<sup>nd</sup> Officer, Chhaygaon P.S. On that day after receiving an ejahar lodged by one Arjun Biswas at 2.00 p.m, the O/C, Chhaygaon P.S—S/I Bhaskar Mallah Patowary registered a case bearing Chhaygaon P.S Case No. 411/2017 U/S-448 of IPC R/W Section 8 of POCSO Act, 2012 and directed him to investigate the case. Accordingly, on the same day, P.W.5 visited the place of occurrence along with other staffs and recorded the statements of the witnesses including the victim girl. P.W.5 also prepared the sketch map. Ext.2 is the sketch-map and Ext.2 (1) is his signature. P.W.5 seized the birth certificate of the victim girl. The accused-Ramen Roy could not be arrested as he was not found in the house. Next day, accused surrendered before Chhaygaon P.S. He was arrested and produced before the court. On 30.05.2017, he send the victim for her medical examination and P.W.5 sent her to the Court for getting her statement recorded U/S-164 Cr. P.C before the Magistrate. The victim was allowed to go in the zimma of her quardian after her statement was

recorded. Thereafter, he collected the medical report (Ext.5). Victim refused to get her medical examination done. After completion of investigation, on finding sufficient materials against the accused, P.W.5 submitted charge sheet against him U/S-448 of IPC R/W section 8 of POCSO Act. Ext.3 is the charge-sheet and Ext. 3 (1) is his signature.

In his cross-examination, P.W.6 deposed that the incident took place on 23.05.2017 at about 7.00 a.m. It was a written ejahar. P.W.6 did not examine the neighbouring person—Jyotish Mandal as mentioned in the sketch map. He visited the place of occurrence on 29.05.2017 at 3.00 p.m. P.W.6 recorded the statement of the witnesses in the spot.

14. Prosecutrix/victim is examined as C.W.1. She deposed in her evidence that informant of this case is her Maternal Uncle. She knows the accused person—Ramen Roy. The incident took place about 2 years ago at about 7.00/8.00 a.m. Prosecutrix was 12/13 years old at the time of occurrence. At the relevant time, her mother (P.W.3) had gone to fetch water and her father (P.W.2) had gone for grazing the cows in the field. Then, the accused came to their courtyard while she was brooming. He caught hold of her hands and he touched her breast and upper part of her body. C.W.1 raised hue and cry and tried to free herself from his hands. She shouted and called her parents. Her parents after hearing her shouts came running. The neighbouring people also arrived. The accused, then fell at the feet of her parents and asked for forgiveness. Thereafter, he fled away. Her maternal uncle (P.W.1) lodged the ejahar. Police recorded her statement and sent her for her medical examination but she refused to do so. She was also brought before the Magistrate for recording her statement.

In her cross-examination, C.W.1 deposed that her maternal Uncle (informant) stays near her house. She told him the incident on the date of occurrence. She stated that her father and the accused used to cultivate the land by using the same water pump. On the date of occurrence, the accused came to their house to take the handle of the water pump. Then, he caught her hand while she was brooming the courtyard. At present the accused had good relation with her father.

- 15. At the close of the prosecution evidence, statement of the accused person U/S 313 Crpc has been recorded. He has denied committing the offence and declined to adduce evidence.
- 16. Here, in this instant case, prosecutrix (C.W.1) is the vital witness. Her evidence is that at the time of occurrence, the accused came to their courtyard while she was brooming. He then, caught hold of her hands and he touched her breast and upper part of her body. The version of C.W.1 is that she raised hue and cry and tried to free herself from the hands of the accused. She shouted out and then, her parents arrived. Her evidence is fully corroborated by her parents (P.W.2 and P.W.3). It is in the evidence of P.W.2 that on hearing noise in his house, he came and saw the accused in his courtyard, while C.W.1 was brooming there. He was told by C.W.1 that the accused caught her hand. Again, it comes out from the evidence of P.W.3 that she is the eye witness to the occurrence. Her version is that she saw the accused holding the hand of her daughter (C.W.1) as she was brooming the courtyard. She was told by C.W.1 that the accused touched her private parts. Furthermore, evidence of P.W.5 reveals that on hearing 'hullah' in his house, he came there and saw the accused in the courtyard. He too disclosed that C.W.1 was alone in the house and brooming the courtyard. He was told by C.W.1 that the accused came and caught hold of her hand and he touched various parts of her body. So, the evidence of the prosecutrix (C.W.1) finds full corroboration from P.W.2, 3 and 5. Even P.W.1 (informant) has disclosed that the prosecutrix and her father came to his house and reported him that the accused came to their house and he tried to commit bad act by touching the private parts of the prosecutrix. P.W.3 and C.W.1 made it clear that the accused sought for forgiveness for his bad act by falling at the feet of P.W.3. The witness, P.W.3 revealed that when she returned home back after fetching water, she saw the accused holding the hand of her daughter (C.W.1). Then, C.W.1 cried out and told P.W.3 that the accused is trying to pull her out from the house. Upon her arrival, P.W.3 confronted the accused and asked him why he had done such act. Then, the accused apologized by falling at her feet. It further comes out from the evidence of the P.Ws that a village meeting was held regarding the incident.

- 17. It has further come out from the statement U/S-164 Cr. P.C of the prosecutrix that she was 13 years old at the time of incident. Her parents also confirmed that she was a minor girl at that time. Therefore, prosecutrix was a 'child' as per section 2 (d) of POSCO, Act.
- 18. It is well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of the evidence finds it to be reliable. In the present case, the victim has been consistent on the material particulars with regard to the incident. Further, there is full corroboration by her parents, i.e. P.W.2 and P.W.3 together with the reported witnesses namely P.W.1 and P.W.5. Minor contradictions and omissions of testimonies of the witnesses cannot be a ground to discard their evidences. Moreover, there is no enmity between the accused and the victim's family to implicate him in a false case.
- 19. On perusal of the statement of the victim/prosecutrix before the court as C.W.1 and her statement before the Magistrate U/S-164 Cr. P.C, I do not find any major contradiction at all. She has also fully supported the allegations made in the ejahar. The evidence of the victim does not suffer from infirmity so to disbelieve her version. There does not appear anything to show that victim is tutored. Under such circumstances, I do not see any reason to disbelieve the testimony of the victim that the accused caught hold of her hands and touched her breasts and upper part of her body. Now the question is whether this was done with sexual intent. The **Section 29 of the POCSO Act** provides that Court shall presume that the accused has committed the offence unless contrary is proved.
- 20. Defence plea is that the accused came to take the handle of the water pump from the house of the prosecutrix as the same was being used jointly by both of them for watering the fields. But no evidence has been led by the defence side in this regard. In the light of the evidence of the victim (C.W.1) as well as her parents (P.W.2 and 3) together with the evidence of independent witnesses (P.W.1, P.W.4 and P.W.5), this court can presume under section 29 of the POCSO Act, 2012 that it was the accused, who had committed sexual assault upon the victim with sexual intent. As per **Section 30 of POCSO Act**, the culpable mental state of the accused should be presumed. It was for the accused

to rebut that neither he had any sexual intent nor he had committed the offence by proving to the contrary, but the accused failed to do so by adducing any evidence in his defence. His mere statement that he did not grab the victim, as alleged does not inspire confidence at all. This attracts the offence of sexual assault U/S-7 of the POCSO Act which is punishable U/S-8 of the POCSO Act, 2012. So, the offence U/S-8 of the POCSO Act is well proved against the accused. It is also proved that the accused committed house trespass which attracts Section 448 of IPC.

- 21. In the result, it is held that the prosecution has succeeded in bringing home the charges U/S- 448 of IPC R/W Section 8 of the POCSO Act, 2012 against accused—Ramen Roy @ Roben Roy beyond all reasonable doubt. Hence, he is held guilty of committing the offences punishable under section 448 of IPC R/W Section 8 of the POCSO Act, 2012 and is convicted under the said section of law.
- 22. Considering the facts and circumstances of the case and the nature of the offence committed by the accused, he is not entitled to get the benefit of Probation of Offender Act or under section 360 Cr.p.c.

#### 23. **SENTENCE**

Heard the accused on the question of sentence. Also, heard the Learned Defence Counsel as well as the learned Addl. Public Prosecutor. Accused has stated that he has not committed the offence and he has no earlier criminal antecedent. He submitted that he is a cultivator and he has to look after his family. He has pleaded leniency in awarding the punishment. Learned Additional Public Prosecutor submitted that considering the facts and circumstances of this case, a lenient view may be taken and the accused may be imposed the minimum prescribed sentenced. But, the penal provisions of the POCSO Act, 2012 are very stringent in nature. Section 8 of the POCSO Act, 2012 prescribes that minimum punishment of 3 (three) years and maximum punishment of 5 (five) years for the offence of sexual assault. Under such circumstances, this court does not have the discretion to impose a lesser sentence than the minimum prescribed by the statute.

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24. Considering the entire facts and circumstances of the case ,the nature of

the offence, the accused -Ramen Roy @ Roben Roy is sentenced to undergo

rigorous imprisonment for 3 (three) years and to pay a fine of Rs. 5,000/-

(Rupees five thousand) only in default to undergo rigorous imprisonment for 6

(six) months, for the offence under section 8 of POCSO Act. Further, the accused

is sentenced to undergo rigorous imprisonment for another 1 (one) year for the

offence U/S-448 of IPC, which in my opinion, will meet the ends of justice in this

case. Both the sentences will run concurrently.

25. The period of detention already undergone by the accused will be set off

from the period of imprisonment.

26. In this instant case, this court is of the considered opinion that the victim

has not suffered any loss and under such circumstances, she may not require any

assistance for any kind of rehabilitation. And therefore, this court has refrained

from passing any order U/S-357 (A) of IPC.

27. The Judgment is delivered in open Court and written on separate sheets.

28. The case is disposed of on contest.

29. A free copy of the Judgment be furnished to the convict immediately. A

copy of this order and Judgment be sent to the District Magistrate, Kamrup,

Amingaon as per provision of law.

Given under my hand and seal of this Court on this 29<sup>th</sup>day of July,

2019.

Special Judge,

Kamrup, Amingaon

Dictated and corrected by me

Special Judge,

Kamrup, Amingaon

## **APPENDIX**

## **Prosecution Witness:**

P.W.1, Arjun Biswas

P.W 2, Sri Munindra Biswas

P.W 3 Smti. Champa Biswas

Pw-4 ,Ananda Roy

Pw-5 ,Akshay Biswas

P.W.6, S/I Sri Kapil Pathak

C.W.1, prosecutrix

# **Prosecution Exhibit**

Ext.1 is the printed form of the FIR

Ext.2 is the sketch-map

Ext.3 is the charge-sheet

Special Judge, Kamrup, Amingaon