

esent : Shri C. Das

Judge, Special Court Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.22/2018(OLD NO.9/17)

U/S 8 of POCSO Act.

State

versus-

Md. Anowar Hussain

.... Accused

Appearance:

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. H. Ali, M. Rahman, Advocates

Dates of recording evidence: 24.5.18, 28.6.18, 24.1.19

Date of argument

: 8.4.19, 6.5.19

Date of judgment

: 20.5.19

JUDGMENT

The case of the prosecution briefly, is that on 17.10.15, the 1. complainant Alaluddin lodged a FIR before the Officer-in-charge of Salbari police station, alleging inter-alias that on 17.9.15, at about 4 pm., while his 10 years old victim girl went to pick up his cow from the backyard of his house, the accused court having found his daughter alone and as such, with his ill-motive, the accused Mushalouhugged her from behind and pulled her down on the ground and attempted to commit sexual intercourse with her against her will. Hence, the victim out of fear, raised alarm to save herself. Therefore, the accused fled away immediately. Later on, the victim daughter came to home and reported him about the incident. Thereafter, he called for a local bichar before the local public for which there is delay in filing the case.

Accordingly, the police registered the Salbari PS. Case No.139/15 and started its investigation. During the investigation, the I/O visited the place of occurrence, drew its sketch map and examined the witnesses including the victim girl. The I/O also, sent the victim girl for medical examination but she refused for her medial examination. The statement of the victim was recorded u/s 164 of CrPC. Further the I/O seized the original birth certificate of the victim girl. At the end of the investigation, the I/O having found a prima-facie case well established, submitted the charge-sheet against the accused to face trial in the court.

- 3. The accused when appeared in the court after receipt of summons, he was furnished with the relevant copy of the case. After hearing of the parties and on perusal of material on record, the charge u/s 8 of Protection of Children from Sexual Offences Act (in short; the POCSO Act) was framed against the accused person. The charge so framed was read over and explained to the accused person who pleaded not guilty and claimed to be tried.
- 4. The prosecution during the trial, examined as many as, 3(three) witnesses including the victim girl to support its case. Learned Public Prosecutor declined to examine further witnesses of the prosecution for which the prosecution was closed. In the statement recorded u/s 313 of CrPC., the accused denied all incriminating circumstances appeared against him in the evidence on record. The accused however, declined to adduce any evidence in his defense. The argument of the parties was heard at length.

POINT FOR DETERMINATION:

5. Whether on 17.9.15, at about 4 pm., at Kasugaon under Salbari police station at the backyard of the house of the informant Alaluddin, the accused committed sexual assault by touching the vagina and other parts of the body of the victim girl;

DECISION AND REASON THEREFORE:

6. At the time of argument of the case, learned Public Prosecutor supported the case of the prosecution. He submitted that the victim in the case is a minor girl and the occurrence took place at a secluded place where any person normally did not visit. Hence, it is not proper to seek corroboration of the evidence of the victim inasmuch as, it is settled law, in the cases of sexual offences, the

evidence of the victim is important and she cannot be treated like an accomplice with the accused person. So far as the evidence of the victim girl of this case is concerned, it appears that there is reason to believe the version of the victim since a minor victim does not know to describe a false story against a matured person like the accused, he maintained. Further, learned Public Prosecutor submitted that the evidence of the prosecution witnesses tendered their evidence which can be reliable to record a conviction order against the accused in accordance with the provisions of law.

- 7. Per contra, learned counsel appearing for the accused person vehemently, submitted that there is no reliable evidence tendered by the prosecution witnesses and as such, their testimony cannot be the base for conviction of the accused person. He further submitted that if the evidence of the victim girl is carefully examined it would disclose clear that there is no ingredient of section 8 of POCSO Act to implicate the accused in the alleged occurrence. He submitted that another serious point is that there is delay of over one month to file the case by the complainant. The explanation of delay due to calling of local meeting for settlement with the accused cannot be accepted on the ground that such serious offence against a girl child ought to bring to the notice of law immediately. Failure to do so definitely creates doubt over the credibility of the prosecution case. Hence, he prayed for acquittal of the accused person.
- 8. After hearing the above submissions advanced by learned counsels for both parties, it would be proper to go through the evidence on record. It appears that the prosecution examined the complainant Md. Alaluddin as PW1. He is the father of the victim girl. He deposed in the court that on the fateful day, at about 4 pm., the victim girl went to pick up cow from the back side of his house. Later on, someone heard screaming of the victim girl. At that time he was not present in his house. His wife also, heard the screaming of the victim girl. Accordingly, his wife rushed to the sport and found the victim girl while the accused was seen running away.
- 9. In the cross-examination, PW1 stated that he did not see the occurrence. He heard that the accused caught the hand of the victim without any malice. He filed the case out of some misunderstanding. Thus, the evidence of PW1 is found to be not direct but he filed the case to set the law in motion.

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he victim girl and wife of PW1. She stated that she has no knowledge of the occurrence. Apparently, PW2 does not corroborate the version of PW1.

- 11. PW3 is the victim girl. Her name is withheld due to bar of law. She is the daughter of PW1 and 2. She deposed that the accused did not commit any offence against her. Her father filed the case. The police sent her medical examination and recording her statement. Ext.1 is her statement with her signatures. Ext.2 is her medical report with her signatures.
- 12. In the cross-examination, PW3 stated that she cannot say why her father filed the case. She tutored by other to depose accordingly, in Ext.1. she could not remember what she said in Ext.1. A quarrel took place for which her father filed the case. Apparently, PW3 does not corroborate the version of PW1 and the prosecution story.
- 13. PW4 Smti. Nasiran Nessa deposed that she has no knowledge about the occurrence. Hence, her evidence cannot help the prosecution in any manner.
- 14. Thus, after going through the evidence of the prosecution witnesses, it appears that PW3 is the sole victim girl of the occurrence. It is admitted fact that the occurrence took place during day time. It appears from the evidence of PW1 that his evidence is contradictory to his own version made in the examination-in- chief. However, he is not an eye-witness of the occurrence. His evidence clearly shows that the accused tried to pull down the victim on the ground by holding her hand for which the victim raised alarm. But the in the cross-examination, PW2 stated that the accused caught the hand of the victim without any malice. Hence, such contradictory version of PW1 erodes his credibility to rely upon. But he is found to be not direct witness of the occurrence and as such, his version would not disturb the prosecution case adversely.
- As far as, the evidence of PW2 is concerned, it appears that she has no knowledge of the occurrence. But from the evidence of PW1, it appears that of PW2 heard the screaming of PW3 at the relevant time of occurrence and as such, she went to the place of occurrence and saw the accused leaving from the spot. Moreover, PW3 reported the incident to PW2. Apparently, in the evidence, she expresses no knowledge of the occurrence in her version. PW2 contradicts the version of PW1 who is her husband. Thus, such contradictory evidence of PW2

shows that she does not support the claim of PW1 neither she corroborates the case of prosecution. There is no material in her evidence that the accused caught her hand in order to pull her down on the ground. The evidence of PW4 does not support the prosecution case. Thus, the evidence of the prosecution witnesses including the victim girl does not show that the accused caught the hand of the victim in order to commit sexual assault upon her.

16. It is needless to say that the accused is charged u/s 8 of POCSO Act. The offence of sexual assault upon a child, is defined u/s 7 POCSO Act which is made punishable u/s 8 of the said Act. It the provisions u/s 7 of POCSO Act is read, it shows that;

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.

- 17. Thus, the above law is clear about the conduct of the offender about their advancement to the child for such offence. It contains only to touching of the particular parts of body of the child or makes the child to touch such part of the body of the offender or any other person or it requires physical contact with the child but without any penetration. However, it requires such touching with sexual intent. Hence, the prosecution is required to prove that if touching of particular body part of the child is done, it is committed with sexual intent.
- 18. In the instant case, the evidence of PW1 discloses that the accused touched the hand of the victim PW3. His evidence further discloses that the accused touched the hand of PW3 with intent to pull her down on the ground. Apparently, the victim girl was alone at that time. The evidence of PW1 shows that PW3 screamed which was heard by PW2. But PW2 does not corroborate such claim of PW1. Most importantly, the victim never deposed that the accused touched her hand to pull her down on the ground. Hence, there is doubt that if the accused caught the hand of the victim girl in order to pull her down on the ground. In the mist of above contradictory evidence of the prosecution witnesses, it cannot be held that the prosecution could able to prove the fact that the accused touched the hand of the victim girl with his sexual intent. Under such circumstances, the accused cannot be implicated in the offence of sexual assault u/s 8 of POCSO Act.

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Accordingly, it is held that the prosecution has not able to prove its case against the accused person beyond all reasonable doubt. Hence, the accused is found not guilty u/s 8 of POCSO Act and he is therefore, acquitted and set at liberty. His bail bond is stand extended for another six months as provided u/s 437(A) CrPC. Forward a copy of judgment to the District Magistrate, Baksa, at Mushalpur. It appears that the victim is entitled to get monetary compensation for the offence. Hence, this court recommends for payment of adequate monetary compensation to the victim as per provisions of Assam Victim Compensation Scheme by DLSA, Baksa district.

20. Given under the hand and seal of this court on this 20th day of May 2019.

Dictated and corrected by:

C. Das Judge Spi Court Judge Special Halvert -Baksa Mushalpur

Judge Spli Court Baksa, Myshalpir

Typed by:

P. Deka, Com. Typist



<u>List of prosecution witness:</u>

PW1 ... Allauddin ... informant

PW2 ... Smti. Shab Khatun

PW3 ... the victim girl

PW4 ... Smti. Nasiran Nessa

List of defence witness:

Nil

List of documents exhibited:

Ext.1 ... the statement of the victim u/s 164 CrPC

Ext.2 \dots the medial report

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