IN THE COURT OF SPECIAL JUDGE: LAKHIMPUR: AT NORTH LAKHIMPUR.

PRESENT-M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.13/2017.

Under Section - 342 IPC and under Section 8 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Sri Mohan Bhushan Rai. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. Arup Bora, Advocate. ... For the Accused.

Date of framing of charge. : 17.05.2017.
Dates of taking evidence. : 28.11.2017, 04.06.2018, 08.10.2018

and 12.02.2019.

Date of hearing Argument. : 23.05.2019. Date of delivery of Judgment. : 06.06.2019.

<u>JUDGMENT</u>

1. The case of the prosecution side may, in brief, be

described thus:

The informant, Smti Mamoni Chutia on 19.03,2017 lodged an ejahar with Chaoldhowa Police Out Post under Boginadi Police Station to the effect that the accused, Sri Mohan Bhushan Rai was an Assistant Teacher of Rupahi Rajgarh L.P. School of her village.

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Her daughter victim X, a minor girl was reading in class-III in the aforesaid school at the time of occurrence. On 17.03.2017, her daughter victim X went to the school and after coming back from the school, the victim X stopped speaking with others and she was found depressed. On the following day, she asked her daughter victim X what had happened with her. Then, the victim X stated to her that on the previous day at about 10 am, while she was in the school, the accused, Sri Mohan Bhushan Rai got the victim X entered into the toilet of Rupahi Rajgarh L.P. School and tried to commit rape upon her person by gagging her mouth.

- 2. On receiving the ejahar, the In-charge of Chaoldhowa Police Out Post made a G.D. entry of the same vide Chaoldhowa Police Out Post GDE No.332 dtd. 19.03.2017 and forwarded the ejahar to the Officer-in-charge of Boginadi Police Station for registering a case under proper sections of Law. On receiving the ejahar, the Officer-in-charge of Boginadi Police Station registered a case vide Boginadi P.S. Case No.51/2017 under Section 342 IPC RW Sec.8 of the POCSO Act.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence i.e., Rupahi Rajgarh L.P. School, Rupahi Rajgarh Gaon under Boginadi Police Station and prepared the sketch map of the place of occurrence. The I.O. arrested the accused, Sri Mohan Bhushan Rai and forwarded him before the court. The victim X had been forwarded to the doctor of North Lakhimpur Civil Hospital for her medical examination and accordingly, the medical examination of the victim X had been done at North Lakhimpur Civil Hospital. The victim X was, thereafter, forwarded to the court for recording her statement u/s 164 CrPC, and accordingly the statement of the victim X was recorded u/s 164 CrPC. The I.O. recorded the statements of the witnesses u/s 161 CrPC. The I.O. after completion of investigation of the case on being found sufficient

incriminating materials against the accused, Sri Mohan Bhushan Rai under Section 342 IPC RW Sec.8 of the POCSO Act, accordingly submitted the charge-sheet against the accused, Sri Mohan Bhushan Rai under Section 342 IPC RW Sec.8 of the POCSO Act.

- 4. The accused, Sri Mohan Bhushan Rai made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient materials against the accused person under Section 342 IPC and under Section 8 of the POCSO Act in the case record, the charges under Section 342 IPC and under Section 8 of the POCSO Act had been framed against the accused, Sri Mohan Bhushan Rai. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 5. In course of trial, the prosecution side examined 9 (nine) witnesses including the Medical Officer and the Investigating Officer of the case.
- 6. The statement of the accused person had been recorded u/s 313 CrPC, which is a total denial of commission of any offence.
- 7. The accused person led no evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
 - 10. The points for determination in this case are :

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(I) Whether the accused, Sri Mohan Bhushan Rai on 17.03.2017 at about 10 am at Rupahi Rajgarh L.P. School under Boginadi Police Station, Dist. Lakhimpur, wrongfully confined the victim X, a minor girl in the toilet of the aforesaid school?

(II) Whether the accused person after confining the victim X, a minor girl in the toilet of Rupahi Rajgarh L.P. School under Boginadi Police Station, Dist. Lakhimpur, committed sexual assault on the person of the victim X?

11. **DECISION AND REASONS THEREOF**

The prosecution side examined 9 (nine) witnesses.

PW.1, Smti Mamoni Chutia is the informant of the case as well as mother of the victim X. PW.1, Smti Mamoni Chutia in her evidence stated that the occurrence had taken place about 7 months back. At the time of occurrence, her daughter victim X was reading in class-III at Rupahi Rajgarh L.P. School. She also stated that the accused person is the Asstt. Teacher of Rupahi Rajgarh L.P. school. From her evidence, it is appeared that she had not seen the occurrence. From her evidence, it is found that she came to know that at the time of occurrence, her daughter victim X went to the toilet of the school for urinating. Then, the accused person went to the toilet and due to fear, her daughter victim X climbed over the wall and then, two boys arrived there and rescued her daughter victim X. Thereafter, her elder sister, Smti Mousumi and her son, Sri Bitu Gogoi took her daughter victim X into her house. She in her evidence also stated that the victim X did not state anything to her and she was crying. She in her evidence also stated that her mother on seeing the condition of the victim X told that the victim X might be attacked by ghost. She in her evidence also stated that on the following day, the victim X had not gone to the school. She also stated that subsequently, the victim X stated to her that at the time of occurrence, she went to urinate, but

on seeing the accused person, she was shocked and climbed over the wall. She in her evidence also stated that she had lodged the case against the accused person as she suspected that the accused person might have attempted to do some bad acts with the victim X. She in her cross-examination stated that she lodged the ejahar against the accused person on suspicion.

This is the evidence adduced by PW.1, Smti Mamoni Chutia, the informant of the case as well as mother of the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.2 is the victim X. PW.2, the victim X in her evidence stated that the accused, Sri Mohan Bhushan Rai is the Asstt. teacher of her school. She also stated that one day, she went to the toilet of their school for urinating. Then, she found the accused there and due to fear, she climbed over the wall, but at that time, two boys namely 'Dou' and 'Pitou' saw her and they brought her down from the wall. She in her evidence also stated that thereafter, her elder brother, Manjit took her to the house. She also stated that she had informed the matter to her mother. She in her evidence also stated that the accused had not done anything wrong with her. She also stated that her parents thought that she had been attacked by ghost.

This is the evidence adduced by PW.2, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.3, Sri Pranjal Pratim Bhuyan in his evidence stated that he knows the accused, Sri Mohan Bhushan Rai, who is the teacher of Rupahi Rajgarh L.P. School, which is situated in their village. He in his evidence also stated that he came to know the victim X while

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she was reading in Rupahi Rajgarh L.P. School. He in his evidence also stated that the occurrence had taken place about one year back. He also stated that at the time of occurrence, he was reading in class-V at Rupahi Rajgarh L.P. School. He in his evidence also stated that at the time of occurrence, the accused, Sri Mohan Bhushan Rai was in the office room. He also stated that he along with one Rahul Tani came out from the class room to answer nature's call. At that time, they saw the victim X was lying over the partition wall of the urinal of the school. Then, they informed their teacher accused, Sri Mohan Bhushan Rai regarding the matter. Then, the accused, Sri Mohan Bhushan Rai came and took the victim X into the office room of the school by taking her on his lap. Thereafter, the accused person called Bitu, the brother of the victim X, who was also reading in the aforesaid school at that time. He in his evidence also stated that then the accused person sent the victim X in her house along with her brother, Bitu.

This is the evidence adduced by PW.3, Sri Pranjal Pratim Bhuyan. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing any offence.

PW.4, Sri Rahul Tani in his evidence stated that he had read up to class-VIII at Rupahi Rajgarh L.P. School, and the accused, Sri Mohan Bhushan Rai was the teacher of that school. He also stated that he left Rupahi Rajgarh L.P. School in the year, 2017. He in his evidence also stated that he knows the victim X, whose house is situated nearby his house. He also stated that the occurrence had taken place about one year back. At the time of occurrence, he was reading in class-V at Rupahi Rajgarh L.P. School. He in his evidence also stated that at the time of occurrence, the victim X was reading in class-III in Rupahi Rajgarh L.P. School. He also stated that at the time of occurrence, he was in Rupahi Rajgarh L.P. School. At the time of occurrence, he and his classmate, PW.3 Sri Pranjal Pratim Bhuyan came out from the class to answer nature's call. While they went to

urinate in the urinal of the school, they saw the victim X had fallen down over the partition wall of the urinal of the school. Then, he along with PW.3 Sri Pranjal Pratim Bhuyan came to the accused, Sri Mohan Bhushan Rai and narrated the incident. Then, the accused Sri Mohan Bhushan Rai came to the urinal and took the victim X to the office room by taking her on his lap from the wall of the urinal of the school. Thereafter, the accused person sent the victim X to her house. He in his evidence also stated that when they went to urinate in the urinal, at that time, the accused Sri Mohan Bhushan Rai was in the office room of the school. He also stated that on the following day while he was playing in the school, at that time, the victim X was also there and she stated that on the previous day, she was attacked by ghost in the school.

This is the evidence adduced by PW.4, Sri Rahul Tani. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing any offence.

PW.5 is Sri Raj Kumar Rai, who is the President of the School Managing Committee of Rupahi Rajgarh L.P. School. PW.5, Sri Raj Kumar Rai stated in his evidence that in the year, 2017, he was the President of Rupahi Rajgarh L.P. School. He also stated that the accused, Sri Mohan Bhushan Rai is the Asstt. Teacher of Rupahi Rajgarh L.P. School. He in his evidence also stated that he knows the victim X, who is the daughter of Smti Mamoni Chutia. He also stated that about one year back one day, Sri Bipin Mudoi, the headmaster of Rupahi Rajgarh L.P. School called on him and requested to visit Rupahi Rajgarh L.P. School. Accordingly, after 2 days, he went to Rupahi Rajgarh L.P. School, and then the headmaster, Sri Bipin Mudoi stated to him that he had heard that an awkward incident had taken place in the school few days ago between Sri Mohan Bhushan Rai and one student of the school, the victim X. He in his evidence also stated that then, he enquired about the matter by interrogating the students and teachers

of the school. He in his evidence also stated that the students of the school stated that the victim X on the date of occurrence was lying on the partition wall of the urinal of the school, and on getting the information of the same, the accused, Sri Mohan Bhushan Rai went there and took the victim X into the office room of the school. He in his evidence also stated that the students stated to him that the accused person had not done anything. He also stated that the students stated to him that the victim X had been attacked by the ghost.

This is the evidence adduced by PW.5, Sri Raj Kumar Rai. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing any offence.

PW.6, Smti Rupali Bora is the cook of Rupahi Rajgarh L.P. School. PW.6, Smti Rupali Bora in her evidence stated that the accused, Sri Mohan Bhushan Rai is the Asstt. Teacher of Rupahi Rajgarh L.P. School. She also stated that the victim X, who was a minor girl had been reading in Rupahi Rajgarh School. She in her evidence also stated that the occurrence had taken place about one year back. On the date of occurrence, she was working in Rupahi Rajgarh School as cook. She also stated that she had not heard anything in the school as on the date of occurrence, she was busy with her duty. She in her evidence also stated that she had left the school in the evening, some one had stated to her, whether she knows that accused, Sri Mohan Bhushan Rai had committed sexual offence with the victim X. She in her evidence also stated that she did not know anything as she was busy with her own duty i.e., cooking food in the school. She also stated that thereafter, she came to know from the people of her village that the incident of sexual offence that had been aired involving the accused, Sri Mohan Bhushan Rai and the victim X, was false.

This is the evidence adduced by PW.6, Smti Rupali Bora. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.7 is Sri Manashjyoti Gogoi, who is a minor boy. PW.7, Sri Manashjyoti Gogoi in his evidence stated that he has been reading in Rupahi Rajgarh Adivasi M.E. School in class-VI. He also stated that in the previous year, he was reading in Rupahi Rajgarh L.P. School in class-V. He also stated that he knows the victim X as the victim X was reading in class-III in Rupahi Rajgarh L.P. School while he was in class-V in that school. He in his evidence also stated that the occurrence had taken place about one year back. He also stated that on the date of occurrence, the school was open and he along with other students were in the school. The victim X was also in the school. At about 10 am, he went to the urinal of the school. Then, he saw the victim X on the partition wall of the urinal of the school. He also stated that he instantly informed the matter to the accused, Sri Mohan Bhushan Rai, who is the teacher of the school. Then, the accused Sri Mohan Bhushan Rai came and took the victim X to the office room of the school. He in his evidence also stated that thereafter the victim X was sent to her house along with Bitu, a student of their school.

This is the evidence adduced by PW.7, Sri Manashjyoti Gogoi. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing any offence.

PW.8 is Dr. Mousumi Saikia, who had medically examined the victim X. From her evidence, it is found that after examination of the victim X, she did not find any sign of recent sexual intercourse and sign of any external injury.

PW.9, SI Priyabrat Gogoi is the Investigating Officer of the case, who had investigated the case and submitted the charge-sheet against the accused person.

The consideration of the evidence of PW.9, the I.O. SI Priyabrat Gogoi is not necessary in view of the evidence adduced by the prosecution witnesses examined as mentioned here-in-above.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Section 342 IPC and under Section 8 of the POCSO Act brought against the accused, Sri Mohan Bhushan Rai. The accused person deserves to be acquitted.

13. I, therefore, hold the accused, Sri Mohan Bhushan Rai not guilty and acquit him from the charges under Section 342 IPC and under Section 8 of the POCSO Act. The accused person is set at his liberty forthwith.

14. The bail bond of the accused person is cancelled and his surety is discharged.

 $\mbox{15. Given under my hand and seal of this court on} \label{eq:court}$ this the 6^{th} day of June, 2019.

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. <u>WITNESSES EXAMINED BY THE PROSECUTION SIDE</u>:

PW.1 – Smti Mamoni Chutia, the mother of the victim X as well as informant of the case. PW.2 – Victim X. PW.3 - Sri Pranjal Pratim Bhuyan.

PW.4 - Sri Rahul Tani.

PW.5 - Sri Raj Kumar Rai.

PW.6 - Smti Rupali Bora.

PW.7 - Sri Manash Jyoti Gogoi.

PW.8 - Dr. Mousumi Saikia, the M.O. of the case.

PW.9 - SI Priyabrat Gogoi, the I.O. of the case.

2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>:

Nil.

3. DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE:

Ext.1 - Ejahar.

Ext.2 - Medical Examination Report.

Ext.3 - Sketch map of the place of occurrence.

Ext.4 - Charge-sheet.

4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>: Nil.

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.