IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

Sessions Case No. 124/2015

(Under Section 8 of the POCSO Act)

Present: S.P. Moitra,

Sessions Judge

Kamrup(M), Guwahati

State of Assam

- Vs -

Sri Sri Balen Das

.....Accused

Appearance for the Parties:

Advocate for the State : Mr. H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Mr. B. Deka, Learned Advocate

Date of recording evidence : 06.03.2016, 08.06.2016, 12.08.2016,

29.09.2016 & 03.03.2017

Date of Argument : 12.07.2017

Date of Judgment : 02.08.2017

J U D G M E N T

1. Brief facts of the case of the prosecution, as emerged from the written FIR (Ext-2) lodged by the informant Nikunja Medhi are that his minor daughter (name withheld) was studying in Class IX in Holy Child School, Krishna Nagar, Chandmari, Guwahati and usually he used to drop her at

school at 7:30 a.m., She used to come from school to their home alone at 2:00 p.m. It is alleged that taking that chance, the accused person abused his minor daughter and on last 20.05.2014 at about 2:10 p.m., when his daughter was coming back from school, the accused person forcefully touched his daughter by pulling her umbrella and tried to embrace her on the road at Krishnanagar near Holy Child School gate.

- 2. On the basis of the said FIR (Exhibit 2), Chandmari PS Case No. 257/14 was registered U/S 8 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as "POCSO Act") and was taken up for investigation. In course of investigation, I.O. visited the place of occurrence, prepared the sketch map of the place of occurrence and also recorded the statements of the witnesses. The statement of the victim was also recorded under Section 164 of Cr.P.C. before the learned SDJM (II), Kamrup(M), Guwahati. After completion of the investigation, the I/O submitted charge-sheet against the accused person U/S 8 of the POCSO Act.
- 3. Cognizance of the offence was taken under the aforesaid section of law. The accused person who was on bail entered appearance before this Court and he was allowed to remain on previous bail. The copies of the relevant documents were furnished to the accused in compliance to the provision of section 207 of the Cr.PC. On consideration of charge, charge U/S 8 of POCSO Act was framed against the accused; charge was read over and explained to the accused to which he pleaded not guilty and claimed to face the trial.
- **4.** To bring home the charge, prosecution examined, as many as, 5 (Five) witnesses on its behalf and also exhibited five documents. Defense plea was of complete denial of any guilt, as appears from the trend of cross-examination, as well as, from the statement of the accused, recorded U/S 313 of the Cr.P.C.. The defence also adduced the evidence of 1 (one) witness on its behalf, including the evidence of the accused person
- **5.** I heard the argument advanced by the learned counsel for the parties.

6. Point for determination:

(i) Whether on 20.05.2014, at about 2:10 p.m., at Piyaliphukan Nagar, Chandmari, the accused person committed sexual assault on the person of a minor girl?

Decision and reasons thereof:

- **7.** I have gone carefully through the entire evidence on record both oral and documentary. For the sake of convenience and brevity the evidence of the offence on both the points are taken up altogether for discussion and decisions.
- 8. PW1 is the alleged victim of the occurrence and her testimony reveals that on 20.05.2014, at about 2:10 p.m., the occurrence took place on the main road of Krishnanagar . She testified that at that time she was a student of Class IX of Holy Child School and she was coming back to her house on foot. She further testified that she was holding an umbrella to protect her from sunshine. Her deposition reveals that accused Balen Das used to wait in a shop regularly by the side of the road and on that day, the accused person followed her and suddenly dragged her umbrella. She also revealed that thereafter the accused person touched her cheek and her breast. She added that she started to cry and went back to her house. She added further that she told her mother about the occurrence and at about 3:00 p.m., her father came back from his office and he was reported about the occurrence. She also added that prior to that her mother had already informed him over phone. She reveals that thereafter her father lodged the FIR at Chandmari P.S. and her statement recorded before the Magistrate. She proved Ext-1 as her statement.

During cross examination, the witness stated that sometimes her father used to drop her at the school, but added that often she used to go alone. She also admitted that her house is situated at 1 k.m. away from the school and 2/3 girls used to go to the school from nearby her house. She also admitted that for going to her school from her house, there are four corners and there are shops etc. The witness also stated that in her school,

there are Class KG to Higher Secondary and in her section alone, there were 42 nos. of student. She also stated that nearby their school, there was Gurukul Jatiya Vidalaya also. She further added that to take their wards, the parents used to come to the school. She admitted that while giving statement before the Magistrate, she stated that the accused person had called her by using the word "Mamu". She stated that her father was known to all in the locality. She further admitted that her father is a police personnel.

9. PW2 Smti. Pallabi Medhi is the mother of the victim girl and her testimony reveals that the incident took place at about 2:10 p.m. on the road at Chandmari Krishna Nagar. Her testimony reveals that after the school hour, her daughter was coming back from the school and it was about 2:25 p.m. and after coming back from the school, her daughter told her that while she was coming back to the house on foot, the accused person named above, suddenly came from the back and dragged her umbrella. She added that her daughter also reported her that the said accused person told the victim "Mamu you are so beautiful". She added that thereafter the accused person touched her cheek and also her breast. She added further that her husband was not in the house and she informed her husband about the incident over phone. She stated that her husband came back in the evening and he did not go to the police station in that evening and on the next day at morning, he went to the police station to lodge the FIR.

During cross examination, the witnesses admitted that she accompanied her husband to the police station. The defence brought out some contradictions in her evidence in comparison to her previous statement before the I.O., by way giving suggestions to the witness and the witness admitted the same. She stated that her daughter used to go to the school alone because her father did not get any time to accompany her. However, she admitted that she stated before the police that her father used to drop and to bring his daughter (victim) back from the school. She had stated that the victim started to cry after coming back to the house and she asked her about the incident. She stated that her husband came back at 7:00 p.m. She also stated that her husband lodged the FIR at Chandmari P.S. and she also went to the police station.

10. PW3 Sri Nikunja Medhi is the informant of the case and he testified that his daughter, i.e. the victim was the student of Class IX at Holy Child School. He testified that on 20.05.2014, at about 2:15 p.m., while his daughter was coming back from the school at Krishna Nagar, the accused person dragged her umbrella on the road and thereafter told her how beautiful was she. He added that the accused person also touched her cheek. He stated that his wife informed him about the occurrence over phone. His further testimony is that after getting the information, he could not come back immediately because he was on duty and came back in the house at night. He added that after coming back in the house he asked the victim and his wife about the incident and thereafter lodged an FIR at Chandmari P.S. He proved Ext-2 as the FIR. This witness also stated that he know the accused person from before.

During cross examination, the witness admitted that he used to accompany his daughter to school everyday. He further admitted that he could come to know about the occurrence at about 3:00 p.m. from his wife. He added that he was PSO to SP Bibekananda Das at the relevant point of time. He also stated that he informed SP Bibekananda Das about the occurrence. He further admitted that the FIR written by some other person, as because he does not know English. He stated that the occurrence took place about 1½ k.m., away from the Holy Child School. He also admitted that he got the FIR forwarded through SP Bibekananda Das. He came back to the house at about 11:00 p.m. He further disclosed that he resides at Piyali Phukan Nagar area from 2001. He admitted that he knew Satyajit Medhi, Nayan Deb Sarma and Debeswar Das, who sold possessory right of land to Balen Das on 21.04.2011 at the consideration of Rs. 60,000/-. He further admitted that he could not hand over the possession of the said land to the accused person. He further admitted that about two years back, the accused person filed a case against him at Chandmari P.S. on the allegation of cheating. He further admitted that in 2015, he injured one Nipol Bezbaruah of Piyaliphukan area by his official revolver and for that reason, he was suspended from the police department. He denied the suggestion that as the

accused demanded his money back, he did not agree to the same and thereafter lodged this false.

- **11.** Now, from the testimony of the three witnesses, I find that these three witnesses contradicted one another regarding vital facts of the case. While the victim girl stated before this Court that the accused person came from behind and dragged her umbrella, in her statement recorded under Section 164 of Cr.P.C., she did not state that the accused person came from behind and dragged her umbrella. Rather she stated that the accused person called her and as he is a neighbour, she stopped on his call.
- **12.** Secondly, she stated that her father came to the house at about 3:00 p.m., after receiving the information from her mother, but her mother, i.e. PW2 testified that her husband came to the house at about 7:00 p.m. PW3 i.e. the informant and the father of the victim, on the other hand stated that he came back to the house at night. That time is relevant in this case, because the case was filed on the next day of the alleged occurrence. If the victim is correct, then after coming back to the house at 3:00 p.m., the informant had much time to lodge the FIR on that very day, but it was not done. On the contrary, if the mother of the victim is correct, then also he came back at 7:00 p.m. on that very day. The Chandmari P.S. is not away from the place of occurrence and as such he could have come to the police station on that very day to lodge the FIR against the accused person, but it was not done. The FIR was lodged according to PW1 on the next morning and it was lodged at Chandmari P.S., but P.W.3, i.e. the informant stated that he lodged the FIR through SP Bibekananda Das. The Printed Form of the FIR shows that the FIR was lodged on 21.05.2014 at 5:00 p.m. Thus, there was a gap of more than 24 hours. The informant is a police personnel and it is difficult to believe that he does not know anything about the law. It is evident from the testimony of the victim that in Holy Child School, there are classes from KG to Higher Secondary and all the classes have three sections. She also stated that alone in her own section of Class IX, there were 42 students. Her testimony also reveals that at the time of break of the school, the parents use to come to take their children. It is also evident from her testimony that nearby the said Holy Child School, there is another school and

at the relevant time, there must be students, parents and the other person on the road. It is difficult to believe that inspite of the road being crawled, the accused person committed sexual assault on her and no body noticed the same. The prosecution failed to examine a single eye witnesses of the occurrence except the victim. Of course the conviction can be based on solitary testimony of the victim, but her evidence must be unblemished and trustworthy. However, in this particular case, her solitary testimony is not of such starling character that alone on the basis of the testimony of the victim, the accused can be convicted.

13. Only other witnesses examined by the prosecution is Chandra Kalita. PW4 Smti. Chandra Kalita testified that on 20.05.2014, at about 2:30 p.m., she was in front of her house and then she saw the victim to come back to the house. She added that she called her, but the victim did not give any reply. She added that she saw something different in her face and she was looking angry and she did not ask her anything more.

During cross examination, she admitted that they have a WagonR bearing registration No. AS-01-AK-5592 and her son Arup Kalita, committed accident at the time of driving of the vehicle. She admitted further that on 09.10.2011, due to the said accident, son of the accused received injuries. This witness also could not state anything about the occurrence. On the contrary, it is evident that her relationship with the accused person was not good.

- **14**. PW5 SI Nancy H. Vaiphei is the Investigating Officer and I have already noted that she confirmed some of the contradictions and omissions in the evidence of the witnesses, in comparison to their previous statements before the I.O.
- **15.** Thus from the close scrutiny of the entire evidence on record, I find that it is difficult to believe that although the occurrence took place at noon in a busy time, there is no eye witness of the occurrence except the sole victim. The evidence of the victim is also not of a starling character, it also transpires that although the occurrence took place on 20.05.2014, the FIR was lodged on the next day. There are contradictions in the testimony of the three

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witnesses, i.e. the victim and her parents, regarding the time when the informant came back to the house after getting the information of the occurrence. It is also evident that the relationship between the accused person and the informant was not good. The informant himself admitted that he along with others sold some land in the hilly area to the accused person at a consideration of Rs. 60,000/-, but could not give possession of the said land to the accused person. It is evident that the accused person had lodged an FIR against the informant on the allegation of cheating. Thus, relationship between the informant and the accused were strained and inimical and instead of any corroboration from others, it is relied on the sole testimony of the victim and her parents.

16. On the contrary, the accused person adduced the evidence as DW1 and he also corroborated that in the year 2011, he purchased a plot of land from Sri Nayandev Sarma, Sri Satyajit Medhi, Sri Nikunja Medhi and Sri Debeswar Das at a consideration of Rs. 60,000/-. He proved Ext-A as the unregistered sale deed. He also testified that when he went to possession of the land, he came to know that the said land belongs to Piyali Phukan Nagar Unnayan Samittee. He further stated that then he met the said persons and discussed the matter and they assured him to return the consideration money, but the informant refused to pay the money. He stated that the matter lingered for long three years and he was not repaid the and then he informed this matter said Unnayan Samittee on money 19.05.2014, in the meeting, organized by the said Unnayan Samittee. He added further that the said four persons were present in the meeting along with other members of the said Samittee and in that meeting those persons agreed to pay the amount of him, but Nikunja Medhi again refused. He added that as soon as he came out the meeting then the informant threatened him. He also added that subsequently, the informant lodged an FIR at Chandmari P.S. against him on false allegation and he was arrested in connection with this case and forwarded to the Court. He added that after his release on bail, the three persons, except the informant, returned back an amount of Rs. 41,500/-. He proved the Ext-B as the money receipt.

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17. In view of the discussion of the entire evidence on record, I find that

the prosecution failed to establish the case against the accused person,

removing all shadow of doubt, the benefit will go in favour of the accused

person.

18. In result accused Sri Balen Das is held not guilty of offence

punishable u/s 8 of the POCSO Act and he is accordingly acquitted and set at

liberty forthwith. Bail Bond furnished on his behalf, will remain in force for

the next six months.

19. Signed, sealed and delivered in the open court on this 2nd day of

August, 2017 at Guwahati.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati

APENDIX

(A))	Prosecution	Exhibits	
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Ext-1 : The statement of the victim recorded under Section 164 of

Cr.P.C.

Ext-2: FIR

Ext-3: Printed form of FIR.

Ext-4 : Sketch Map. Ext-5 : Charge sheet

(B) **Defense Exhibit** :

Ext-A: Agreement Ext-B: Money receipt.

(C) <u>Court Exhibit</u> : Nil

(E) **Prosecution Witnesses**:

PW-1 : Ms. Mandita Medhi

PW-2 : Smti. Pallabi Medhi

PW-3 : Sri Nikunja Medhi

PW-4 : Smti. Chandra Kalita

PW-5 : SI Nancy H. Vaiphei (I.O)

(F) **Defense Witnesses**:

DW-1: Sri Balen Das

(G) **Court Witnesses** : Nil.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati