IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 18 of 2016

(Under Section 10 of the POCSO Act, arising out of G.R. Case No. 1428/16 of

2016)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Anup Kumar Tiwari

Son of Sri Nand Kishore Tiwari Of 1812 Poineer Unit, Solmara,

Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge :- 03-02-2017

Date of Recording Evidence :- 20-02-2017 & 28-06-2017

Date of examination of accused u/s :- 05-07-2017.

313 Cr.P.C

Date of Argument :- 05-07-2017.

Date of Judgment :- 05-07-2017.

Counsel for the Prosecution :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. S.E. Alam, Sr. Advocate.

JUDGMENT

1. In this case accused Sri Anup Kumar Tiwari is put for trial for allegation of charge u/s 10 of the POCSO Act, 2012.

2. The prosecution case according to the FIR in brief is that on 07-05-2016 at about 6 p.m. the accused came to the informant's quarter along with his children. During that time, the informant's daughter was in the first floor. She

was busy in playing with other colleagues and friends. The accused by holding the hands of the daughter of the informant, asking her to come to the ground floor to play with his children. But the informant's daughter out of fear fled away and while her mother arrived from CSD Cantee she narrated the whole story to her. On arrival of the informant at the evening time from duty his wife reported the whole incident to him. Accordingly, informant Amit Tyagi filed this ejahar before the I/C of Salonibari Out Post on 09-05-2016.

- On receipt of the aforementioned FIR, the I/C of Salonibari Police Out Post by giving the GD Entry No. 320 dated 09-05-2016 and forwarded the same to O/C Tezpur Police Station. On receipt of the said ejahar, O/C, Tezpur Police Station registered Tezpur P.S. Case No. 777/16 under section 448/354/506 of the IPC read with section 8 of the POCSO Act, 2012. After completion of usual investigation, the O/C Tezpur Police Station filed charge sheet under section 448/506 of the IPC read with section 8 of the POCSO Act, 2012 against the accused Sri Anup Kumar Tiwari.
- **4.** On being appeared the accused before this Court, after hearing both parties, framed charge under section 10 of POCSO Act, 2012 against the accused Sri Anup Kumar Tiwari and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case prosecution has examined five numbers of witnesses. After completion of said witnesses learned counsel for the accused submitted to close the evidence on the ground that the statement of the complainant and other witnesses including the victim and her friends no way supported the prosecution case. Therefore, it would be futile to examine the other witnesses. Learned Public Prosecutor, Sonitpur, Tezpur has also conceded.
- **6.** On scrutiny of the statements of the prosecution witnesses which includes the complainant, victim and other material witnesses, it appears that none of the witnesses supported the prosecution case against the accused. Hence, I think with the evidence of the said witnesses, prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of

the accused person. Considering these aspects, prosecution evidence is closed. Accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegations and declined to adduce defence evidence.

- **7.** I have heard the argument put forward by the learned counsels of both sides.
- **8.** The point for decision in this case is that -

(1) "Whether on or about 6 p.m. of 07-05-2016, at Solmara, under Tezpur Police station the accused committed aggravated sexual assault on "Miss X" (victim), a minor girl below the age of 12 years, and thereby committed an offence punishable under section 10 of the Protection of Child from Sexual Offences Act?

Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **10.** PW 1 Nitu Singh, stated that she knows the accused. She knows a girl named Taru who used to reside in a block opposite to their block. At the time of incident she went to shopping along with the mother of Taru. After arrival at home Taru's mami told her something but she cannot recall what she exactly told. The children who were accompanied with Taru told them that uncle (accused) came and after playing with them he left. Police has only asked her name and address. Other than that police did not ask me anything.

In cross-examination, she admitted that they returned from shopping at about 6 p.m. On their arrival they have seen all the children were playing including Taru. The children told them that uncle (accused) also brought his children with him to play. Previously accused used to reside in the said block. Taru and her family came to the quarter which is adjacent to their quarter. Previously, the accused occupied that quarter. Accused came with his children to return some utensils.

11. PW 2 Miss Pallak Kumari who was examined after questioning her to test her intelligence, stated that she knows the accused (Uncle). She also knows Taru. The incident took place in the evening when their school was over. During that time she along with many students were playing which includes Taru and Nisha. At that time uncle (accused) came to return his utensils to Taru. There was no quarrel took place. Uncle along with his children was playing and then he left with his children. Taru was also playing.

In cross-examination, he admitted that during that time at the down stair all the children were playing including Taru. Uncle hand over the utensil to Taru and she went to upstair to keep utensil then she again came down and again playing. During that time uncle (accused) was in the down stairs. Uncle also brought his children to play with them. After playing he left with his children. Nothing happened during the time when uncle was there.

PW 3 Sri Amit Tyagi stated that he knows the accused A.K. Tiwari. Victim **12.** is his daughter. The incident occurred on 07-05-2016 at about 6/6.30 p.m. During that time he was posted as a sippy at 5104 ASC Bn, C/O 99 APO located at Solmara. By virtue of service at the relevant time he resides at official quarter at Solmara i.e. 24/2. At the time of incident he was on his duty. At 9.30 p.m. while he returned to the quarter, his wife Smti Rina Devi informed him that while she was not at quarter accused came to their quarter to play his children with their children. During that time the accused forced their child namely Miss X and Arnav to come to ground floor for play with his son and daughter. During that time, accused also forced other children to come down the ground floor to play with his children. On hearing about the incident, he become angry and on the next day he filed the ejahar before the I/C Salonibari Out Post. Ext. 1 is the said FIR and Ext. 1(1) is his signature. The ejahar was written by him. Actually due to misunderstanding he filed this case. In fact no such alleged incident took place.

In cross-examination, he admitted that as he was angry so he approached police and wrote the ejahar at the instance of police of Salonibari Police Out Post.

- 13. PW 4 Smt. Rina Tyag, the mother of the victim, stated that she knows the accused A.K. Tiwari. The incident occurred in the year 2016 in the evening. At the relevant time, she went to CSD Canteen to purchase some materials. During that time her husband was on duty. After arrival in the quarter her children told that uncle i.e. accused came to their quarter and forced her children to come down to ground floor for playing with his son and daughter. Lateron her husband came and her children reported him about the facts. Thereafter, her husband filed this case against the accused person. Actually, due to misunderstanding her husband filed this case. She does not want to further proceed the case as her children told nothing happen more than this.
- **14.** PW 5 Miss X, the victim of this case, stated that the she knows the accused A.K. Tiwari. The incident occurred in the year 2016 in the evening. At the relevant time they were residing at Solmara at quarter. One day, accused/uncle came to their house with his children to play with them in absence of her parents. He forced them to come down to the ground floor to play with his children. They refused but he insisted them to play with his children. When her parents arrived at quarter, they reported the matter to her parents. Her father became angry and filed this case against the accused.
- **15.** These much is the evidence of the prosecution. Accused pleads total denial while his statement was recorded u/s 313 Cr.P.C.
- **16.** Learned counsel for the accused submitted that the statement of the victim, complainant and other witnesses particularly, PW 2 who was alleged to have been playing with the victim at the relevant time, stated nothing against the accused as to the any of the alleged offence. Hence, praying for acquitting the accused. Learned Public Prosecutor, Sonitpur, Tezpur also conceded.
- **17.** Since, the case is charged u/s 10 of the POCSO Act, I think, it would be better to what ingredients required to prove the said charge.
- **18.** To brought the charge under section 10 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

Section 9 - Aggravated sexual assault

- (a) Whoever, being a police officer, commits sexual assault on a child—
 - (i) within the limits of the police station or premises where he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as a police officer; or
- (b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child--
 - (i) within the limits of the area to which the person is deployed; or
 - (ii) in any areas under the command of the security or armed forces; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or
- (g) whoever commits gang sexual assault on a child.

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Explanation.--when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits sexual assault on a child, which--
 - (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (I) of section 2 of the Mental Health Act, 1987(14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
 - (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- (I) whoever commits sexual assault on the child more than once or repeatedly; or
- (m) whoever commits sexual assault on a child below twelve years; or
- (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or

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- shared household with the child, commits sexual assault on such child; or
- (o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits sexual assault on a child and attempts to murder the child; or
- (s) whoever commits sexual assault on a child in the course of communal or sectarian violance; or
- (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.
- 19. In this type of case, the most important witness is the victim. Here in the present case as stated herein before, the victim stated nothing against the accused. She simply stated that at the relevant time accused/uncle came to their house with his children to play with them in absence of her parents. He forced them to come down to the ground floor to play with his children. They refused but he insisted them to play with his children. When her parents arrived at quarter, they reported the matter to her parents. Her father became angry and filed this case against the accused. Even the complainant PW 3 stated so. He stated that at the relevant time at about 9.30 p.m. while he returned to the quarter from the duty, he was reported about the incident by his wife that accused forced his children i,e, the victim and Arnav to come to ground floor for play with his son and daughter. On hearing about the incident, he become angry and on the next day he filed the ejahar before the I/C Salonibari Out Post. He clearly stated that actually due to misunderstanding he

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filed this case. In fact no such alleged incident took place. By that way, the

complainant has also goodbye to the prosecution case. The other material

witness i.e. PW 2 who was playing with the victim at the relevant time stated

that at the relevant time many students were playing which includes Taru and

Nisha. . At that time uncle (accused) came to return his utensils to Taru. There

was no quarrel took place. Uncle along with his children was playing and then

he left with his children. Taru was also playing. This witness has also not

supported the prosecution case any way. In fact this much is the evidence of

the complainant, victim and other material witnesses. From the statements of

the aforesaid witnesses, nothing was revealed against the accused

20. Therefore, in view of the aforesaid evidence of the prosecution

witnesses, I have no hesitation to hold that the prosecution has failed to prove

any ingredients of alleged offence against the accused Sri Anup Kumar Tiwari.

Under such circumstances, I acquit him and set him at liberty forthwith.

21. The liability of the bailor is hereby discharged.

Returned the GR Case No. 1428/16.

Given under my Hand and Seal of this Court on this the 5th day of July,

2017.

(Ashok Kumar Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Smt. Nitu Singh

2. Prosecution Witness No.2 :- Miss Pallak Kumari

3. Prosecution Witness No.3 :- Sri Amit Tyagi, complainant

4. Prosecution Witness No.4 :- Smt. Rina Tyagi

5. Prosecution Witness No.5 :- Victim.

EXHIBITS.

Exhibit 1 :- FIR

Exhibit 1(1) :- Signature of the complainant.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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