CAUSE TITLE POCSO Case No. 27/16

Informant: Smti. Pari Singh,

W/o- Sri Rana Singh,

R/o- Mattack Tea Estate, Marapat Line, near Sessa Baba,

PS- Lahoal,

District- Dibrugarh.

Accused: Sri Pradip Handique,

S/0- Sri Green Handique,

R/o- Gharia Gaon, PS- Tengakhat, District- Dibrugarh.

ADVOCA TES:-

For the State: Mrs	s. Runumi Devi,	learned Public Prosecutor.
For the Defence:		learned Advocate

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 27/16 G.R. Case No. 633/16

> > State of Assam

-Vs-

Sri Pradip Handique

Charges: Under Sections 8/4/18 of the POCSO Act.

Date of evidence on: 14-07-16, 16-07-16, 19-09-16 & 03-10-16.

Date of argument: 18-03-17. Date of Judgment: 16-05-17.

JUDGMENT

- 1) The facts leading to this case in brief infra is that on 08-03-16, at about 5:00 pm, the minor victim X was left in the shop by her mother who went to her house. When the mother returned to the shop, she found her daughter crying and when asked, the victim X replied that Sri Pradip Handique (hereinafter the accused) committed shameful assault on her. When she tried to get hold of the accused to ask him about the incident, the accused shoved her away and fled leaving behind his red coloured Bajaj Pulsar motorcycle bearing No. AS-06-B-3743. An ejahar regarding this incident was lodged with the police which was registered as Lahoal Police Station Case No. 26/16 under Section 376 of the Indian Penal Code (IPC in short), read with Section 7 of the Protection of Children from Sexual Offences Act, 2012 (POCSO in short).
- 2) The Investigating Officer (IO in short) embarked upon the investigation and recorded the statements of the witnesses and forwarded the victim to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). On finding prima facie materials, he submitted Charge-Sheet against the accused under Section 376 of the IPC, read with Section 7 of the POCSO Act.
- 3) On appearance of the accused, copies were furnished and after hearing both the Sides, a formal charge under Section 8/4/18 of the POCSO Act was

- framed and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of seven witnesses including the IO. To refute the charges, the defence crossexamined the witnesses in extenso, but did not tender any evidence in defence. On the questions regarding the circumstances arising against him, the plea of the accused through his answers under Section 313(I)(b) of the CrPC is that of total denial.

SUBMISSIONS:

5) The learned Public Prosecutor Smti. R Devi submitted that this case has been proved beyond reasonable doubt and there is clinching evidence against the accused person. It is submitted that considering the age of the victim, stringent punishment ought to be inflicted on the accused. On the other hand, the learned defence counsel laid stress in his argument that this case is fraught with contradictions and the accused deserves acquittal. It is also submitted that if the accused is convicted on the basis of a false case, he will be dismissed from his newly appointed service in the BCPL.

POINTS FOR DETERMINATION:

- 6) On the backdrop of the rival contentions proponed at the bar, the following points are apposite for decision:
 - 1. Whether on 08-03-16, the accused committed sexual assault on X, a minor?
 - 2. Whether on the same day, time and place, the accused attempted to commit penetrative sexual on the minor victim X?

DECISION THEREON AND THE REASONS FOR THE DECISION

- 7) To decide the case in its right perspective, it is necessary to advert to the evidence on record. The victim was only ten years of age and oath was not administered after assessment of the victim by the Court. Several questions were asked to the victim and her intelligence was assessed by the Court and oath was not administered.
- 8) The victim stated that she saw the accused for the first time on the day of the incident. She identified the Ext. A, the photograph of the accused. She further stated that on the day of the incident, she was in her shop near her house and her mother went to their house. At that time, one boy came in a bike and asked her whether there was Rajanigandha in their shop. She

answered that she had Rajanigandha, but she could not reach out for the same, as the packet was kept at a height. So she asked the boy to help himself with the packet and the boy tore off one packet. Thereafter, he asked for a Cigarette and she replied that Cigarette was not available. At that time, Pranami Mahi went to her shop and asked for biscuits and she replied that biscuit was not available and so Pranami went away. The boy again entered into their shop and asked whether she would like to take ping-pong and she replied that she did not know what ping-pong was. Then he told her to promise that she will eat ping-pong and then he took out his penis and asked her to take it into her mouth, assuring that he will leave after that. She further stated that she rebuked the boy as a dirty person and pushed him away and went outside. Meanwhile, Pranami Mahi informed her mother that an unknown person was inside their shop and so her mother came back to the shop with Pranami Mahi. They reached the shop while the accused was leaving and she narrated the incident to her mother and Pranami Mahi and as the accused was about to flee on his motorcycle, Pranami Mahi caught hold of the motorcycle. Then Pranami Mahi's husband, i.e., Baba Das also arrived and was about to hit the accused, but the accused managed to escape by jumping over the fence and diving into the Sessa River. Thereafter, she did not see how the accused escaped. Baba Das informed the police and the police arrived and took away the bike. On the same day, she went to the police station along with her parents and the police recorded her statement. She also came to the Court for recording her statement. Ext. 1 is her statement and Ext. 1(1) to Ext. 1(4) are her signatures.

9) The evidence of PW-1 is also supported by the evidence of Smti. Pranami Hazarika who testified as PW-4. She testified that she saw the accused on the day of the incident and later learnt that the name of the accused is Sri Pradip Handique. The victim girl is known to her and her age is about ten years. The incident took place about four months ago. On that day, at about 5:30 pm, she went to the victim's shop. When she went out of the shop, she met the victim's mother near the shop and then she went to the shop and saw the accused standing in their shop. Then the victim's mother screamed and asked her to catch the accused person who was in the shop. Then she immediately with her husband rushed towards the shop and tried to catch the accused, but the accused escaped and left his bike in front of their shop. Later she

- learnt that the victim's mother lodged an ejahar with the police. Although, PW-4's evidence supports PW-1's evidence, her testimony does not implicate the accused. She testified about a commotion in the shop, but she did not implicate that the accused is complicit. She did not describe why the commotion arose in the victim's shop.
- 10) The evidence of PW-1 is also supported by the evidence of her parents. Sri Rana Singh testified as PW-2 that the incident took place about four months back. On the day of the occurrence, when he returned home from work at about 7:00 pm, he noticed a gathering. Then he learnt from his wife that the accused person tried to misbehave with his daughter while she was in their shop. After a while, police arrived and seized the bike left behind by the accused person from the place in front of their shop. Ext. 3 is the Seizure-List and Ext. 3(2) is his signature. He went to the police station along with his wife and his daughter. The police recorded his statement. In the police station, he came to know that the accused person was apprehended by another person. The police then brought the accused person to the police station. He further stated that his daughter was ten years at the time of the incident. In his cross-examination, he stated that he did not know if the accused person tried to misbehave with his daughter or if there was another person in his shop. In his examination-in-chief, he stated that he did not know the accused person, but he saw the accused person for the first time on the day of the incident. He further stated in his cross-examination that he did not ask his daughter about the incident. He further stated in his crossexamination that he did not know whether the accused was the owner of the motorcycle, but he heard from the other people that the motorcycle belonged to the accused person. Thus, the evidence of PW-2 rebuts the evidence of PW-1. He altogether denied in his cross-examination that he did not know whether the accused person tried to misbehave with his daughter or attempted to misbehave with his daughter and he also did not ask his daughter about the incident.
- 11) The victim's mother Smti. Pori Singh testified as PW-3 that she saw the accused person for the first time on the day of the incident. The incident took place on 08-03-16. On that day, at about 4: 30 pm, she left her daughter X in the shop and went to her house to serve tea to her father-in-law who was suffering from Paralysis. Her daughter X was about ten years at that time.

After an hour, when she returned to her shop, she met Pranami Hazarika (PW-4) in front of her shop who informed her that one unknown person was entering into her shop. When she reached her shop, she saw the accused person tearing a packet of Rajanigandha and her daughter X was standing in front of her shop. Then she expressed her displeasure and asked the accused why he was tearing the packets himself and she wanted to slap the accused. The accused then replied that as the little girl could not reach for the packet hanging on top, he helped himself to the packet. She (PW-3) was enraged because the accused person should have taken the packet from outside the shop, but he entered into the shop. When she was about to offer the change, her daughter informed her that the accused had taken out his penis and asked her to suck it. At that time, Pranami Hazarika (PW-4) who was following her caught hold of the accused person when she heard about the incident. In the mean time, Babu @ Tapan Hazarika, husband of Pranami arrived and tried to assault the accused who jumped over the fence and fell into the Sessa river. Several people assembled there and someone informed the police. After half an hour, the police arrived and she along with her husband and daughter went to the police station. She lodged the ejahar Ext. 2 where Ext. 2(1) is her Signature. The police seized the motorcycle belonging to the accused person from the place of occurrence which was left behind by the accused person in front of their shop. Ext. 1 is the Seizure-List and Ext. 3(1) is her signature. The police recorded her statement. Police also recorded the statement of her daughter and forwarded her to the Magistrate who recorded her statement. She also accompanied her daughter to the Court.

12) The evidence of PW-2 corroborates the evidence of PW-1. The evidence of PW-2 clearly depicts that at the time of the incident, the accused displayed his penis to her daughter and asked her to suck it. She testified that after she returned to the shop, her daughter who was left alone in the shop was present and the accused person was helping himself to a packet of Rajanigandha. Her daughter informed her that the accused took out his penis and asked her to suck it. Pranami who heard about the incident caught the accused and her husband tried to apprehend the accused. PW-I & 2 categorically stated that Babu tried to apprehend the accused, but the accused escaped and plunged into the Sessa river. The accused also left

behind his motorcycle which was parked in front of their shop. This motorcycle was seized by the police. There is no doubt about it. This motorcycle was seized by the police through Ext. 3(2). Although PW-3 was reluctant to testify in her cross-examination that the motorcycle seized by the accused vide Ext. 3 belonged to the accused person, yet there is clinching evidence that the accused left behind his motorcycle when he tried to escape from Babu. PW-1, 2, 3 & 4 testified in corroboration that the accused left behind the motorcycle while escaping and this is supported by the IO's evidence.

- 13) The Investigating Officer Sri Anjan Saikia testified as PW-7 that he seized the motorcycle from the place of occurrence in the presence of witnesses. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature. It is clear from the Ext. 3 that during investigation, the police seized the motorcycle on being produced by the complainant Smti. Pori Singh. The registration number is AS-06-H-3473. The motorcycle was given in jimma to the owner. There is no doubt about the fact that a motorcycle was left behind by a person on the day of the incident. The PW-7 testified that on 08-03-16, he was posted as Officerin-charge at Lahoal Police Station. On that day, he received an information over phone and registered a GDE No. 182 dtd. 08-03-16 at Lahoal Police Station and proceeded to the place of Occurrence. During investigation, he recorded the statements of the witnesses and seized the motorcycle alleged to have been left behind by the accused person. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature. The complainant lodged the ejahar. Ext. 2 is the ejahar which was registered as Lahoal Police Station Case No. 26/16 dtd. 08-03-16 under Section 376 IPC, r/w Section 7 of the POCSO Act. He continued with the investigation. The police searched for the accused person. The accused person was finally caught at about 7:30 pm behind the Sessa River and his garments were wet at that time. At this stage, it is pertinent to mention that PW-1 and her mother PW-3 testified that while escaping, the accused plunged into the Sessa River.
- 14) Thereafter, the accused was sent for medical examination. He recorded the statements of the victim and other witnesses. On the next day, he forwarded the victim to the Court for recording her statement under Section 164 CrPC. On 10-03-16, Sri Girin Handique, the father of the accused appeared in the police station and after verifying the documents of the motorcycle, it was

given in jimma to Sri Girin Handique. After completion of investigation, Charge-Sheet was laid against the accused under Section 376 IPC, read with Section 7 of the POCSO Act. Ext. 4 is the Charge-Sheet and Ext. 4(1) is his signature. On a later date, the IO was again re-examined and he exhibited the extract copy of the GDE No. 182 dtd. 08-03-16. Ext. 5 is the Extract Copy of the GDE and Ext. 5(1) is his signature. Ext. 5 & 2 are similar and corroborative. The ejahar Ext. 2 and the GDE Ext. 5 is corroborated by the evidence of PW-1 & 2. It is clear from the ejahar and the Seizure-List that the motorcycle No. AS-06-H-3743 was seized in connection with this case and the IOs evidence clearly depicts that the accused person's father took jimma of the motorcycle. PW-1 & 2 had been confronted regarding their omission to state before the IO. The IO who testified as PW-7 affirmed that PW-1 did not state before him that one boy came on a bike and asked her for Rajanigandha and that she told the boy that as Rajanigandha packets were kept at a height, it was not reachable by her. She asked the accused to tear the packet and the accused helped himself to one packet and that he asked for a cigarette, but she told the accused that she did not have cigarettes and at that time, Pranami Mahi came to her shop for biscuits and when she did not get any biscuits, Pranami went away. The IO also affirmed that the victim did not state before him that the accused managed to flee by jumping over the fence and diving into the Sessa river. The IO also affirmed that the victim did not state before him that she scolded the accused as dirty person and shoved him away.

- 15) The minor victim was confronted by the defence lawyer regarding some minor contradictions. The victim was not contradicted regarding the indecent act of the accused person. The learned defence counsel did not confront the victim whether she stated before the IO that the accused person displayed his penis and asked her to suck his penis. This evidence of the minor victim remains uncontroverted and uncontradicted. The evidence of the victim's mother also remains uncontroverted regarding the fact that the accused showed his penis to the victim and asked her to suck the penis.
- 16) Moreover, although it was not stated by the victim under Section 161 of the CrPC that Pranami was present at the time of the incident, Pranami and her husband Baba supports the testimony of X and her mother that both were present in the shop at the time of the incident.

- 17) The complainant Smti. Pori Singh was confronted by the learned defence counsel regarding her omission to state before the IO which has been affirmed by the IO that she did not state before the IO that Pranami told her that an unknown person entered into her shop. PW-7, i.e., the IO also affirmed that PW-3, i.e., Smti. Pori Singh did not state before her that the accused tore a packet of Rajanigandha and her daughter was standing in front of the shop and she scolded the accused for tearing the packet himself and she wanted to slap him and then the accused replied that X could not reach for the packet of Rajanigandha and so he took the packet himself and that the accused offered her (PW-3) Rs. 100/- for Rajanigandha. The IO also affirmed that PW-3 did not state before him that at that time, Pranami Hazarika was following her and hearing about the incident from X, she caught hold of the accused and in the meantime, Baba arrived and tried to assault the accused. The IO also affirmed that PW-3 did not state before him that she was enraged because the accused could have taken the Rajanigandha from outside the shop, but he entered into the shop.
- 18) All the aforesaid contradictions cannot be assessed to be embellishments. The witnesses may have supplemented their evidence by some extraneous descriptions, but the crux of the case was not refuted. In the instant case, the victim's testimony cannot be scrutinized as the evidence of a normal child witness. This is the evidence of a victim who is a child witness. When she gave her statement under Section 161 CrPC immediately after the incident, 'X' was in a state of shock. So, she must have missed some nuances while narrating the incident.
- 19) Moreover, Section 29 of the POCSO Act enjoins that:
 - Presumption as to certain offences. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.
- 20) Reverting back to the instant case, it has already been held in my foregoing discussions that there is clinching evidence that the accused displayed his penis to the victim. it has already been discussed that the defence failed to contradict the witnesses, i.e., PW-1 & 3 that the accused displayed his penis

to the victim and suggested to take his penis into her mouth. There are several contradictions and extraneous statements made by the victim while testifying in the Court. This extraneous statement of the victim and her mother have been contradicted by the defence counsel and affirmed by the IO. But these are minor contradictions and does not rebut the evidence that the accused displayed his penis to the victim. The evidence clearly depicts that the accused displayed his penis to the victim and asked her to take into her mouth. The pivotal point of this case has not been rebutted. It is true that during the time of investigation, the victim and her mother must have missed some subtle nuances while narrating the incident to the IO, but they have been cohesive and coherent while describing how the accused displayed his penis and asked the victim to suck it.

21) No overt act can be attributed to the accused. No force was exercised by the accused in an attempt to assault the victim sexually or commit sexual assault on the victim. The evidence depicts mere gesture of the accused person and no overt act has been depicted by the evidence of the victim X and her mother PW-3. Although PW-4 was reluctant to evince against the accused, yet her evidence supports the fact that on the day of the incident, at about 5:30 pm, she went to the victim's shop and when she went out of the shop, she met the victim's mother. When she went out of the shop, she met the victim's mother and then she went with her to the shop and at that time, she saw the accused standing near the shop. At that time, X's mother screamed. Her evidence clearly hints that X's mother screamed at that time, though she did not testify anything against the accused. Pranami's husband's evidence also supports the evidence of the victim that at the time of the incident, he saw the accused running away from the shop and several people gathered and the accused left his bike in front of the shop. Later, he learnt that the accused tried to misbehave with the victim. He further testified that police went to the place of occurrence on the night of the occurrence and also on the next day. Pranami's husband is Sri Tapan Hazarika and he testified as PW-5. This person Sri Tapan Hazarika is described as Babada by the victim in her testimony as PW-1. PW-1 & 2's evidence depicts in a coherent manner that when the accused tried to flee at the time of the incident, PW-5 Babada tried to apprehend him, but the accused managed to flee. PW-5 did not state that he tried to apprehend the accused when he tried to flee, but his

- evidence depicts that the accused tried to misbehave with the victim girl. His evidence also depicts that the accused ran away from the place of occurrence.
- 22) From my foregoing discussions, it can be held that although PW-5 was reluctant to narrate the entire incident in the Court, yet his evidence clearly depicts that he heard from the people that the accused misbehaved with X.
- 23) Another witness Sri Sujoy Moran testified as PW-6 that he saw the accused person on the day of the incident which took place about 2/3 months back. On that day, at about 5:30 pm, while he was in his shop which is in front of the complainant's shop, he heard a commotion and went out. He noticed several people assembled there and he learnt from the villagers that the accused uttered some indecent words to the victim. He further testified that he saw the accused person standing in front of the victim's shop.
- 24) In view of my foregoing discussions, it is thereby held that the evidence elicited clearly depicts that the accused is complicit. PW-1 & 3 have clearly described how the accused is complicit. It has already been discussed earlier that when an accused is alleged of offence under Section 3 & 7 of the Act, the Court shall presume that the accused person has committed or attempted to commit the offence, unless the contrary is proved. In the instant case, the accused could not prove the contrary.
- 25) Moreover, Section 30 of the Act envisages:

Presumption of culpable mental state.-

- 1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- 2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

- 26) Reverting back to this case, the accused failed to defend himself and prove that he has no such mental state.
- 27) Recapitulating the entire evidence, it is held that there was no overt act on the part of the accused to exercise pressure and sexualy assault the victim or to cause penetrative sexual assault on the victim. His act is a mere suggestion to the victim to suck his penis. He did not act in furtherance of his suggestion. Thereby the accused is not held guilty of the offence under Section 8 of the POCSO Act. In an attempt to commit an offence, there has to be an overt act which has not been proved by the prosecution. Thereby the accused is also not held guilty under Section 4/18 of the Act. It is germane to mention at this stage that the culpable mental state existed and there is clinching evidence in this regard.
- 28) It is apt to mention at this stage that the learned defence counsel laid stress in his argument that the complainant was desirous to amicably settle the dispute with the accused and so she admitted in her cross-examination that she was not interested to proceed with the case. Moreover, her husband denied any knowledge about the incident. But I have already discussed earlier that there is clinching evidence against the accused. The evidence has been meticulously scrutinized and analyzed in my foregoing discussions. Regarding the time of incident, the witnesses have correctly given the time. The witnesses could not give accurate time because they are naive citizens who does not keep record of date and time. They have given the date and time as far as their memory could take them back. The witnesses have given evidence on 14th & 16th July, 2016 in this Court and the case was registered on 08-03-16. PW-1 is a minor victim and so her evidence is assessed within that realm. PW-2, 4 & 5 correctly stated that the incident took place about four months back. The complainant has given an accurate date of incident. It can be clearly assessed from the evidence that the incident took place in the evening.
- 29) After considering the entire evidence, it is held that the prosecution could prove beyond reasonable doubt that the accused has committed an offence described under Section 11 of the POCSO Act. Section 11 of the Act is a lower

- offence and although not charged under Section 12 of the POCSO Act, the accused can be punished under Section 12 of the POCSO Act.
- 30) According to Section 11 of the POCSO Act, a person is said to commit sexual harassment upon a child with sexual intent when he utters any word or makes any sign, or makes any gesture or exposes any part of his body with intention that such word or sign shall be heard or such part of his body shall be seen by the child. The punishment for offence under Section 11 of the POCSO Act is described by Section 12 of the Act.
- 31) Regarding the quantum of sentence, I believe that the accused taking the advantage of the victim being alone behaved in a very disgraceful manner. I believe that a sentence of imprisonment will meet the ends of justice and will also act a deterrent. The age of the victim is taken into consideration and depravity of the accused person's mental state is also taken into consideration while sentencing him. I believe a sentence to imprisonment for one and half year will suffice.
- 32) I have heard the accused on the quantum of sentence and the accused has replied that he is an employee of BCPL and if he is sentenced to imprisonment and fine, he will be dismissed from service.
- 33) According to my opinion, I do not think that this case needs to be recommended to the Legal Services for compensation, because no overt act took place.

SENTENCE:

- 34) I convict the accused Sri Pradip Handique under Section 12 of the POCSO Act and sentence him to undergo rigorous imprisonment for 1 ½ year (one and half year) and a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo rigorous imprisonment for 2 (two) months.
- 35) The period of detention already undergone by the accused during investigation and trial is set off with his custodial sentence.
- 36) Furnish free copies of judgment to the accused and to the District Magistrate.

 Judgment is signed, sealed and delivered in the open Court on the 16th day of May, 2017.

APPENDIX

List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Sri Rana Singh;
- 3. PW-3 Smti. Pori Singh;
- 4. PW-4 Smti. Pranami Hazarika;
- 5. PW-5 Sri Tapan Hazarika;
- 6. PW-6 Sri Sujoy Moran; and
- 7. PW-7 Sri Anjan Saikia.

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 4 Charge-Sheet; and
- 5. Ext. 5 Extract copy of Lahoal Police Station GDE No. 182 dtd. 08-03-16.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.