# IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special 22/2018 corresponding to GR Case No.695/2015 & Bokajan Police Station Case No. 133/2015 Under Section 8 of the POCSO Act.

State of Assam Versus

Shri Jayanta Mech @ Jayanta Boro

# Name of informant/complainant:

Smti. Mungli Orang S/o Shri Mohesh Orang Village: Morkordoiguri

P.S Bokajan

District: Karbi Anglong.

## Name of the accused person facing trial:

Shri Jayanta Mech alias Jayanta Boro,

S/o Shri Ram Boro Village: Morkordoiguri

P.S: Bokajan

District: Karbi Anglong.

#### <u>Advocates appeared</u>:

For the prosecution: Mr. D. Deka, Public Prosecutor

For the accused : Mr U. Paul/M.K Singha/Roma Engtipi

Argument heard on : 17.8.2018/30-08-18 Judgment pronounced & delivered on : 05-09-2018

### **JUDGMENT**

- 1. It is a case of sexual assault alleged to have been committed by the accused, Shri Jayanta Mech alias Jayanta Boro towards the victim child having age of 13 years.
- 2. The prosecution case in brief is that on 24.7.2015 the informant, Smti. Mungli Orang lodged an ejahar with Bokajan Police Station stating inter alia that on 23.7.2015 at about 7 PM, her daughter-Smti. Sonali Orang aged about 13 years while coming from a shop of their village, the abovenamed accused pulled her by catching her hand and touched her breasts. As she made hue and cry, the accused left the place. Thereafter, coming back to their house, she narrated the occurrence before her mother. On receipt of the written ejahar, O/C, Bokajan Police Station registered a criminal case vide Bokajan Police Station case No.133/2015 U/S 341/354A of the IPC R/W Sec.8 the POCSO Act. On completion of the investigation, charge-sheet was submitted U/S 341/354A of the IPC R/W Sec.8 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the accused person before the Court of the then learned Magistrate, copy was furnished to him. Thereafter, the case was committed to the then Special Judge, Karbi Anglong, Diphu. Afterwards, this case came to Court of the undersigned. After renumbering the case as Spl. 22/2018, and having very carefully gone through submissions of learned lawyers of both sides as well as case diary, this Court found

sufficient grounds for presuming that the accused person had committed the offence U/S 8 of the POCSO Act and accordingly, the charge was framed. The particular of the charged offence was duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial Prosecution has examined as many as five witnesses including the informant and alleged victim. Accused person has been examined U/S 313 of Cr.P.C. Defence examined none. Plea of defence is of total denial.

#### 5. **Point for determination**

Whether the accused person, Shri Jayanta Mech alias Jayanta Boro on 23.7.2015 at about 7 PM at Morakordoiguri Adibashi Gaon under Bokajan PS committed sexual assault upon the victim, Smti. Sonali Orang aged about 13 years by pressing her breasts?

#### 6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

- 7. PW-1 is the informant-cum-mother of the victim child who has stated in her evidence that the occurrence took place in the year of 2015. On the day of occurrence at 7 PM her victim female child went to a shop situated near by their house and it was a rainy day. At that time, she was in the house and the victim child was 12 years old. Coming back from the shop, her victim daughter told her that while she reached near culvert at the time of coming home back, the accused caught hold of her hands and pressed her breasts. Thereafter, she lodged a written ejahar with Bokajan Police Station. Police got the victim child medically examined and her statement recorded in the Court.
- 8. PW-2 is the victim child who has stated in her testimony that the occurrence took place in the year 2015. On the day of the occurrence at about 7 PM she went to a shop nearby their house for purchasing Dal, K. Oil etc. and it was a rainy day. While she was coming home back, near the culvert accused caught hold of her hand and pressed her breasts. Thereafter, she somehow made herself freed from the hands of the accused and reached the house crying. Coming to the house, she told the incident to her mother. At the time of occurrence there was another boy with the accused whom she could not identify. Police got her statement recorded in the Court. Ext.1 is her statement and Ext.1(1) is her signature. At the time of occurrence, she was 12 years old and was reading in class-VI.

- 9. PW-3 is Shri Kishore Orang who is the brother of the informant. He has stated in his testimony that the occurrence took place in the year 2015. In the morning of the following day of the occurrence, he went to the house of the informant on call given by her and on reaching there, the informant informed him that on the previous day at about 7 PM while the victim child went to the shop situated nearby, the accused person restrained her and pressed her breasts. While the victim child raised shouting the accused fled away. Thereafter, the victim came home back crying and told her informant mother about the occurrence. Thereafter, he accompanied his informant's sister for going to Thana at her instance. In the police station, the informant lodged a written ejahar. At the time of occurrence, the victim child was 13 years old. Later on, he came to know that the accused was arrested.
- 10. PW-4 is Shri Mudheswar Karmakar who has stated in his testimony that the occurrence took place in the year 2016. In the morning of the following day of the occurrence, the informant called him for coming to his residence. On reaching there, informant informed him that in the evening of the previous night while her victim daughter was coming home back with some articles from the shop, on the way, the accused person restrained her and pressed her breasts and thereafter, the accused fled away while she raised shouting. On being asked, the victim child informed him that in the evening of previous day at about 7 O' Clock while she was coming home back from the shop with some articles, the accused restrained her on

the way and pressed her breasts in rain. The informant in respect of the occurrence lodged a written ejahar with police station.

PW-5 is the investigating officer who has stated 11. in his testimony that on 24.7.2015 he was working in Bokajan police station as an Attached Officer. On that day, one Mongoli Orang lodged a written ejahar before the O/C stating that on 23.7.2015 at about 7 PM while her 13 years old victim daughter was coming home back from the shop with household items on the way the accused person restrained her and pressed her breasts. She also stated in the FIR that while her daughter raised shouting accused fled away and that coming back home in crying, the victim child informed her about the occurrence. On receipt of the written ejahar, O/C registered a criminal case vide Bokajan PS Case No.133/2015 U/S 341/354A R/W Section 8 of the POCSO Act and asked him to investigate the case. Ext.2 is the ejahar and Ext.2(1) is signature of O/C Loknath Gogoi, he knows. Thereafter on that day, he came to the place of occurrence and recorded statement of the informant, victim child and other witnesses. He prepared sketch map of the place of occurrence. Ext.3 is the said sketch map of the place of occurrence and Ext.3 (1) is his signature. On 25.7.2015 he managed to apprehend the accused person and on 26.7.2015 he was forwarded to the Court for judicial custody. On 27.7.2015 he sent the victim child to Diphu Court for recording her statement and Court recorded her statement. On completion of the investigation, he submitted

charge-sheet U/S 341/354A of IPC/8 of the POCSO Act against the accused person. Ext.4 is the charge-sheet and Ext.4(1) is his signature.

# **Analysis of Evidence**

- Evidence of investigating officer marked as PW-12. 5 is silent that he got the victim child medically examined for ascertaining her age and that he seized any document showing date of birth of the victim child. Section 2(1)(d) of the POCSO Act relates to victim child. According to aforesaid section for becoming victim child, a child must be below 18 years. The defence has not disputed at the time of occurrence the victim child was below 18 years. PW-1 is mother of the victim child who is the best person to say about age of the victim at the time of occurrence. She has stated in her evidence that at the time of occurrence, the victim was 12 years old. PW-3 is the brother of the informant and as such, he can be said to be nearest relative of the victim. PW-4 is the neighbour. According to victim child and PW3, at the time of occurrence, the victim was 13 years old. PW-1 in her cross-examination has stated that at the time of occurrence, the victim was reading in Class-VI. Normally, age of a child reading in Class-VI would be 12/13 years. Taking all aspects into consideration, I find no way to disbelieve the evidence on record that at the time of occurrence, the victim child was 12/13 years old.
- 13. The entire prosecution case so far as alleged occurrence in question is concerned, lies on the

evidence of victim child. Immediate after the occurrence, the concerned IO examined the victim child and after 4(four) days of the occurrence, the concerned I.O. got the statement of the victim child recorded in the Court. Ext.1 is the statement of the victim girl recorded in the Court U/S 164 of Cr.P.C. The victim child has categorically stated in her deposition as well as in her statement recorded U/s 164 of Cr.P.C. that while she was coming home back from the shop with some household items on the way the accused restrained her and pressed her breasts. Even though, she informed her mother and PW-4 that the accused restrained her on the way and pressed her breasts.

14. PW-1, PW-3 and PW-4 are hearsay witnesses. Ext.3 is the sketch map of the place of occurrence which shows that the occurrence took place on the road in between the house of the informant and the shop of Laksheswar Bhumij. It has been argued by learned counsel appearing on behalf of the accused person that non-examination of said Laksheswar Bhumij is fatal to the prosecution. It is evident that at the time of occurrence, it was raining. Case record shows that PW-Laksheswar Bhumij had died on 09.12.2016 before trial of this case started. It is also evident that mother of the victim child did not come out of the house on hearing shouting raised by the victim child at the time of occurrence though she was available in the house. Probably because of raining, the informant could not hear the shouting raised by the victim child. For the reasons stated above, I find no substance in the aforesaid submissions.

- 15. Under section 29 of the POCSO Act, 2012 the court can draw presumption that the accused person was involved in the occurrence in question if the defence fails to prove contrary to the fact where upon the prosecution relies. The said section reads thus:-"29. Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attenuating 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." In the instant case the defence has only taken plea of denial of "sexual assault" towards the victim child. In the instant case the defence the defence has failed to bring the contrary to the prosecution version.
- 16. Under section 29 of the POCSO Act, 2012 the court can draw presumption that the accused person was involved in the occurrence in question if the defence fails to prove contrary to the fact where upon the prosecution relies. The said section reads thus:-"29. Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attenuating 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." In the instant case the defence has only taken plea of denial of "sexual assault" towards the victim child. In the instant case the defence the

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The Hon'ble Apex Court has discussed about the 17. consent of the victim child in the case of Independent Thought v. Union of India reported " (2017) 10 SCC 800" and observed thus:-"53. It is obvious from a brief survey of the various statutes referred to above that a child is a person below 18 years of age who is entitled to the protection of her human rights including the right to live with dignity; if she is unfortunately married while a child, she is protected from domestic violence, both physical and mental, as well as from physical and sexual abuse; if she is unfortunately married while a child, her marriage is in violation of the law and therefore an offence and such a marriage is voidable at her instance and the person marrying her is committing a punishable offence; the husband of the girl child would be committing aggravated penetrative sexual assault when he has sexual intercourse with her and is thereby committing а punishable offence under the Pocso Act. The only jarring note in this scheme of the pro-child legislations is to be found in Exception 2 to Section 375 IPC which provides that sexual intercourse with a girl child between 15 and 18 years of age is not rape if the sexual intercourse is between the girl child and her husband. Therefore, the question of punishing the husband simply does not arise. A girl child placed in such circumstances is a child in need of care and protection and needs to be cared for, protected and appropriately rehabilitated or restored to society. All

these "child-friendly statutes" are essential for the well-being of the girl child (whether married or not) and are protected by Article 15(3) of the Constitution. These child-friendly statutes also link child marriages and sexual intercourse with a girl child and draw attention to the adverse consequences of both."

- 18. Section 7 of the POCSO relates to definition of "sexual assault" which reads thus:- "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."
- 19. The section 8 of the POCSO Act relates to punishment for "sexual assault" incorporated in the section 7 of the POCSO Act which reads thus:-"8. Punishment for sexual assault .-Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine."
- 20. Regarding credibility of the child witness it has been observed by Hon'ble Apex Court in the case law of Raj Kumar V State of MP reported in " (2014) 5 SCC 353" thus:-" Evidence of child witness must be evaluated more carefully and with greater circumspection because a child is

susceptible to be swayed by what others tell him." Similarly the Hon'ble Apex Court has also observed in case of Alagupandi V State of TN reported in " (2012) 10 SCC 451" thus:-" While assessing evidence of child witness, court must carefully observe his/her demeanour to eliminate likelihood of tutoring. Conviction can be allowed to stand without any corroboration but as a rule of prudence it is always desirable to seek corroboration of such evidence from other reliable evidence on record. In such a case court can convict the accused on the sole evidence of the victim child if it inspires the confidence of the court.

- 21. In this regard I would like to refer to the case of **Narender Kumar v. State (NCT of Delhi)** reported in " (2012) 7 SCC 171" and its relevant paragraph is re-produced below:-
  - **"20.** It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case."

22. In view of the discussions made I find no way to discard the evidence of the victim child that at the time of occurrence the accused pressed her breasts while she was coming home back from the shop with household items. Accordingly I find that the prosecution has succeeded in establishing its case under section 8 of the POCSO Act comfortably.

#### **ORDER**

- 23. In the result, I find the accused person guilty under section 8 of the POCSO Act and accordingly he is convicted.
- 24. On the point of sentence, the accused person is heard and to that effect his statement is recorded. It has been submitted by the learned defence counsel that the accused is a poor man having three children without any landed property and as such if the accused person is kept behind the bar his entire family members will have to spend. He has further submitted that it is a fit case where the accused person deserves to be punished leniently. On the other hand opposing the aforesaid submission learned Public Prosecutor has submitted that the very purpose for enactment of POCSO Act will be frustrated if accused person is sentenced with leniently.
- 25. Regarding object of the POCSO Act, the Hon'ble Apex has observed in case of *Eera v. State (NCT of Delhi)* reported in "(2017) 15 SCC 133" thus :-"20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose

of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act."

26. Taking the discussions made above into consideration I do hereby order the accused person to suffer RI of 3 years and fine of Rs. 2000/- i/d SI of 2 months. Let the fine money be paid to the victim

child through his informant mother if realized. Set off the earlier detention period. Let a certified copy of the Judgment and order be supplied to the accused person at free of cost. Let a copy of the Judgment be sent to the District Magistrate, Karbi Anglong, Diphu in terms of section 365 of the CrPC.

- 27. Certainly the sexual assault by the accused person towards the victim caused mental suffering. It also caused mental and financial suffering to the informant who is the mother of the poor victim child. Taking financial condition of the informant as reflected I am of the opinion that for rehabilitation of the victim child the informant needs financial assistance. Hence I do hereby recommend an award of compensation to be paid to the victim child through the informant under the Victim Compensation Scheme laid down under section 357 A of the CrPC. The Secretary of the District Legal Services Authority, Diphu, Karbi Anglong, shall take necessary steps. Inform him accordingly. Let the Judgment be uploaded in the official website.
- 28. Accordingly this case is disposed of on contest.
- 29. Given under my hand and seal of the Court on this 5th September, 2018 at Diphu, Karbi Anglong.

Dictated and Corrected by me

(Md. A.U.Ahmed, AJS) Judge, Special Court Diphu, Karbi Anglong, Assam Assam (Md. A.U.Ahmed, AJS ) Judge, Special Court Diphu, Karbi Anglong,

# **Appendix**

## **Prosecution Exhibited**

Ext-1 is victim's statement

Ext-2 is ejahar.

Ext-3 is Sketch Map of the PO

Ext-4 is the Charge Sheet.

**Defence Exhibited: Nil Prosecution Witnesses** 

PW-1 Mongli Urang

PW-2 is Victim Child

PW-3 is Tisul Urang

PW-4 is Moteshwar Karmakar

PW-5 is Lalmohan Gowala **Defence Witnesses: Nil** 

(Md. A.U.Ahmed, AJS) Judge, Special Court Diphu, Karbi Anglong, Assam