# IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

**SPECIAL (POCSO) CASE NO.** :- <u>35 OF 2016</u>

(Under Section 12 of the POCSO Act, arising out of G.R. Case No. 3267 of

2016)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

**Tezpur** 

Prosecutor :- State of Assam

-vs-

Accused :- Sri Monoj Borah,

Son of Sri Phanidhar Borah, Resident of Deurigaon Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge :- 17/08/2016

Date of Recording Evidence :- 05/12/2016, 11/01/2017

Date of examination of accused u/s

313 Cr.P.C

:- 10/03/2017.

Date of Argument :- 10/03/2017.

Date of Judgment :- 10/03/2017.

Counsel for the Prosecution :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. P. Borah, Advocate.

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#### **JUDGMENT**

- **1.** In this case accused Sri Monoj Borah is put for trial for allegation of charge under Section 12 of the POCSO Act, 2012.
- 2. The factual matrix of the case, according to the FIR in brief is that the informant is a student of Patgaon M.E. School. On 27-09-2016 after completion of school, accused forcefully attempted to take her in his motor bike but she save somehow by feeling away. For last few days this teacher has indicated some off scene sign and forced her to indulge in some misdeed. In the earlier occasions also, she was forced to sit in his lap and wants something. While she asked what things, he desired, then he stated that it is only she who could have given that things. Hence, this prosecution case. The ejahar was filed by victim before the I/C of Salonibari Police Out Post under Tezpur Police station on 30-09-2016.
- 3. On receipt of the aforementioned FIR, the I/C of Salonibari Police Out Post by giving GD Entry No. 955 dated 30-09-2016 and forwarded the same to O/C Tezpur Police Station for registering a case and SI Omar Faruk has already taken up the investigation of the case. On receipt of the ejahar, the O/C of Tezpur Police station registered a case being Tezpur P.S. Case No. 1759/16 u/s 366(A)/511 of IPC read with section 8 of the POCSO Act, 2012. After completion of usual investigation, the I.O. sent up the accused for trial by filing charge sheet u/s 8 of the POCSO Act, 2012 against the accused Sri Monoj Borah.
- **4.** On being produced the accused before this Court, after hearing both parties, framed charge under section 12 of POCSO Act, 2012 against the accused Sri Monoj Borah 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 examined as many as 7 numbers of witnesses including the victim.

**6.** After completion of prosecution evidence, when the case is remained for examination of the I.O., learned counsel for the accused submitted to close the evidence on the ground that the statement of the prosecution witnesses including the victim and other colleague, no way supported the prosecution case as to the alleged offence. From their statement it cannot be revealed any of the alleged sexual intent of the accused. Therefore, praying to close the evidence. I have also heard the learned Public Prosecutor, Sonitpur.

From the evidence of the PWs recorded so far including the parents of the victim, victim and her colleagues, it appears that they have not able to show any ingredients of alleged charge. Therefore, in considering the evidence of the PWs recorded so far, prosecution case would not develop even if examined the I.O. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed.

Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation 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 after the school hours on 27-09-2016 the accused committed sexual harassment upon "Miss X, a minor daughter of Ratul Koch and thereby committed an offence punishable under section 12 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, Sri Rameswar Saikia, stated that he knows the accused Monoj Kr. Boarh. He is their teacher. The incident took place in the

month of September, 2016. On that day in the school, School Managing Committee's meeting was held but he cannot say why the said meeting was held.

In cross-examination, PW 1 admitted that in the school a building was constructed since 2012 but the said building was not completed. There is also a girls' toilet was constructed which was not yet been completed. Therefore, there were a murmuring among the members of the committee for the said toilet construction.

11. PW 2 Smt. Niroda Koch, mother of the victim, stated that she knows the accused Monoj Kr. Boarh. She knows Miss Jaya Boruah and Nikita Roy. The incident took place in the month of September, 2016. After four days of the incident her daughter has lodged the ejahar alleging against the accused that while he teaches in school, he asked her daughter that he has something to say about her to them. In the next day, the accused in the class asked her daughter that he wants something from her which only she can gave. That was reported to her by her daughter. She advised her daughter to ask the accused (teacher) what he exactly wants. On that day, after school hours the accused asked her daughter to sit her in the motor cycle but her daughter refused to sit. But her daughter and his friend Nikita Roy fled away. On the next day, i.e. on 28th September, 2016 she went to school and asked the teacher then accused who is teacher of the school told her that he made fun by stating not seriously. On 30<sup>th</sup> September, 2016 accused along with one teacher went to our home and stating that they convened a Managing Committee meeting for the aforesaid incident and so invited her to attend there.

In cross-examination, PW 2 admitted that accused teaches Maths and Science in the class where her daughter studied. Her daughter is weak in Maths and Science. One Rajesh Misra was transferred from the said school by the Managing Committee but ultimately at the direction of the Hon'ble High Court he was again posted there. She also knows Sri Chenaram Saikia and Kushal Borah

who are also the teachers of the same school. On 30-09-2016 they have convened a meeting suddenly at the school. She has represented at the said meeting on behalf of local Mohila Samity. In the said meeting there were about 100 persons present. In the meeting media persons were also present. In the said meeting it was decided to file a case against the accused. On 28-09-2016 she has lodged an ejahar before the I/C of Salonibari Police Out Post. But the Officer who was the incharge of I/C advised them not to take action immediately and also advised her to convene a school meeting. In the said meeting Sri Ananta Saikia presided as he being the President of the SMC of that school. After the meeting her daughter has again filed an ejahar. The ejahar was prepared by the President of the SMC.

**12.** PW 3 Smt. Juri Koch, stated before the court that she knows the accused Monoj Kr. Boarh. She also knows the victim, Jaya Baruah and Nikita Roy. The incident took place about two months ago. At the relevant time, mother of Sumi Koch informed her that school teacher Monoj Borah wants something from her daughter and in the previous day forcefully tried to take her in his motor cycle but she fled away. Then she advised her to convene a meeting. In the next day, a meeting was held at the school where she was present.

In cross-examination, she admitted that as a president of Matri gut of the school she has to look after the Mid Day meal. She knows accused Monjoj Borah since 2013 as she has involved in SMC since then. Sri Ananta Saikia is the president of SMC and Sri Kamal Saikia is the Head master of that school. One building is under construction since 2012 which is used as Store room. There is also a girls' toilet was constructed which was not yet been completed. She has heard that for that reason inspection from the higher authority has also done. She knows that there is a quarrel in between Head Master and Ananta Saikia in one side and Rajesh Mishra is other side. She does not know in this aspect Monoj Borah helped to Rajesh Mishra. She has no personal knowledge about the incident. Since, 2013 she has not heard any

adverse against the accused Monoj Borah. In their school Monoj Borah is only teacher who teaches Maths and Science. In Maths and science many students failed in examination. She has not visit the school every day.

- 13. PW 4 Sri Chenaram Saikia, one of the Assistant teacher where the accused is also the science teacher clearly stated that at the relevant time the victim is a student of class VIII standard. On 30-09-2016 police has arrested the accused. He does not know the actual incident. The day before the date of arrest of the accused, the mother of the victim informed them that the accused wants something from her daughter. In the next day local people and police came there and arrested the accused. The victim did not inform anything to her.
- 14. PW 5, Miss "X", victim, stated that at the relevant time she was a student of class VIII standard. Accused is their teacher. In the class, the accused looked them. Accused in the summer season asked them to cool him with a hand fan "bichani". Accused did not interest to teach the boys but he teaches girls particularly Maths. One day accused asked her the name of her father and what he is doing. He told her that he has a talk with her which is required to be informed to her parents so he told her that he would go to her house. Why she repeatedly asked him, accused told her to give one thing which can only be given by her. In the next day, after closing of the school, while she went out with her friend Nikita accused asked to sit in his motor cycle but they fled away out of fear. In the next day, accused asked them why they did not sit in the motor cycle. Accused also informed her that he will complain the matter to her parents. In the said day, she informed the matter to her mother and asked her to call the accused to their home but the accused did not go there. Then, she filed the ejahar. Ext. 1 is the ejahar and Ext. 1(1) is her signature. After filing the ejahar, police took her to Magistrate for recording her statement. Ext. 2 is the statement made before the learned Magistrate and Ext. 2(1) to 2(3) are her signatures.

In the cross-examination, she admitted that in the ejahar her name was written by herself but her father's name was written by her father. The ejahar was written by the Chairman of Managing Committee on 30-09-2016. Her friend Nikita Roy always took first in their class. She used to remain in school almost every day with Nikita. While she went to give her statement before the learned Magistrate she was accompanied by president of Managing Committee, Nikita Roy and Jaya Baruah Mam. The chairman of the Managing Committee is Sri Ananta Saikia. At the time of making the statement u/s 164 Cr.P.C., accused asked her and Nikita to embark in his motor cycle.

**15.** PW 6 Miss Nikita Roy, one of the friends of the victim, stated that she knows the accused Monoj Kr. Boarh. He is their teacher. Victim is her classmate. The incident took place two months ago. Miss "X" reported before her that one day, their teacher Monoj Kr. Borah called her near his table and told her that he wants to go her house because he is to tell something to her guardian. She also stated to her that Monoj Sir told her that if he did not say something to her guardian then she is to give something to Sir. Then the victim told Monoj Sir that she wants to offer betle-nut. The victim also told sir that she has nothing to give to sir but sir has stated that she has something to give him. In the next day, after the school Monoj Sir asked her and the victim that he wants to drop them at their home in his bike but they refused to go with him. In the next day, the victim reported the whole story to her mother. Next day, the mother of the victim came to their school and asked our Monoj sir then he replied that he wants to tell the guardian about her tuition. The guardian of victim reported the matter to the Managing Committee of the school. After two days her statement was recorded by the Magistrate. Ext. 3 is her statement and Ext. 3(1) to 3(3) are her signatures.

In cross-examination, she admitted that Monoj Sir teaches Maths and Science to them since class IV. She does not know about the incident but the victim only reported to her. On the day of arrest of Sir, in school there were many people gathered including the members of the Managing Committee and chairman etc. and media persons.

**16.** PW 7 Smt. Bijaya Ray stated that she knows the accused Monoj Kr. Boarh. He is the teacher of Sarupatgaon M.V School. He teaches Science and Maths to her daughter. The incident took place during the Puja season of last year. One Ruma Borah @ Boby Bora asked her to call Nikita as she is to enquire some matter which took place in the school. Then she called Nikita and Nikita told said Boby Borah that one day, her friend Sumi told her that their teacher Monoj Kr. Borah called her near his table and told her that he wants to go to her house because he is to tell something to her guardian.

In cross-examination, she does not have any personal knowledge about the incident.

- **17.** These much is the evidence of the prosecution case. Accused pleaded total denial while his statement is recorded u/s 313 Cr.P.C.
- **18.** Learned counsel for the accused submitted that none of the prosecution witnesses could have stated any ingredients of sexual harassment to the victim as alleged. Therefore, the accused is required to be acquitted. Learned Public Prosecutor, Sonitpur, Tezpur also conceded.
- **19.** Before parting with the case record, it is observed that in the case charge is framed against the accused u/s 12 of the POCSO Act. Section 12 of the POCSO Act is a panelised section of sexual harassment u/s 11 of the POCSO Act define as follows:
- **"11. Sexual harassment –** A person is said to commit sexual harassment upon a child when such person with sexual intent, -
- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation. – Any question which involves "sexual intent" shall be a question of fact.

This clause defines the offence of sexual harassment. It provides a person is said to commit sexual harassment upon a child when such person with sexual intent, - (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor. It further clarifies that any question which involves "sexual intent" shall be a question of fact. "

**20.** Here in the present case, the FIR filed by the victim as well as the statement of the victim, stated that at the relevant time she was a student of class VIII standard. Accused is their teacher. In the class, the accused looked them. Accused in the summer season asked them to cool him with a hand fan "bichani". Accused did not interest to teach the boys but he teaches girls particularly Maths. One day accused asked her the name of her father and what he is doing. He told her that he has a talk with her which is required to be informed to her parents so he told

her that he would go to her house. Why she repeatedly asked him, accused told her to give one thing which can only be given by her. In the next day, after closing of the school, while she went out with her friend Nikita accused asked to sit in his motor cycle but they fled away out of fear. In the next day, accused asked them why they did not sit in the motor cycle. Accused also informed her that he will complain the matter to her parents. In the said day, she informed the matter to her mother and asked her to call the accused to their home but the accused did not go there. Then, she filed the ejahar. Ext. 1 is the ejahar and Ext. 1(1) is her signature.

The victim nowhere stated that accused utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or shows any object to a child in any form or media for pornographic purposes.

There is no any evidence that the accused repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act. There is no evidence that the accused entices a child for pornographic purposes or gives gratification therefor. Anyway, the alleged statement made by the accused to victim has no any sexual intent.

**21.** In view of the aforesaid reasons, the prosecution has failed to prove the allegation of sexual harassment as charged against the accused beyond any reasonable doubt. Hence, the accused Monoj Borah is acquitted and set him at liberty forthwith.

**22.** The liabilities of the bailor is hereby discharged.

The GR Case No. 3267/16 be returned to the learned committal court with a copy of this order.

Given under my Hand and Seal of this Court on this the  $10^{\text{th}}$  day of March, 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

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# **APPENDIX**

## **Prosecution Witness**

1. Prosecution Witness No.1 Sri Rameswar Saikia, 2. Prosecution Witness No.2 Smt. Niroda Koch 3. Prosecution Witness No.3 Smt. Juri Koch 4. Prosecution Witness No.4 Sri Chenaram Saikia 5. **Prosecution Witness No.5** Victim 6. Prosecution Witness No.6 Miss Nikita Roy, Smt. Bijaya Roy, 7. Prosecution Witness No.7

### **EXHIBITS.**

Exhibit 1 :- Ejahar

Ext. 2 :- Statement of the victim

Exhibit 3 :- Statement of Nikita Roy

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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