# IN THE COURT OF ADDL SPECIAL JUDGE ::KOKRAJHAR

Present :- Sri C. Chaturvedy, Addl. Sessions Judge (FTC), Kokrajhar.

> SPECIAL CASE NO.35/2018 U/S.354A of IPC R/W Section 8 of POCSO Act

> > STATE OF ASSAM

Vs

Md. Habibor Rohman Miah S/O Lt. Abdul Mazid Miah Vill:- No.1 Hasrawbari P.S. Gossaigaon District Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Monjit Kr. Ghose
Learned Counsel for the defence Mr. Prasenjit Dutta

Charge framed on 14.02.2019

Evidence recorded on 15.03.2019; 30.03.2019

Argument heard on 30.03.2019

Judgment pronounced on 30.03.2019

### **JUDGMENT**

1. The case of the prosecution is that on 13.09.2017 one xxx, the father of the victim, lodged an FIR with the In-charge of Sapkata police Out-post alleging that on 13.09.2017, at about 7 AM his daughter, the victim, had gone to Maktab where the accused called her and touched her breast and attempted to forcefully take the victim to his residence. The informant also alleged at about 2 / 3 months back the accused had committed a similar act with the victim, a minor girl.

- 2. The FIR was sent to Gossaigaon Police Station. On receipt of the FIR, a case under Section 354/354(A) IPC R/W Section 8 of POCSO Act was registered and investigated. Upon completion of investigation, a charge-sheet was laid against the accused for the offences under Section 354(A) of IPC and R/W Section 8 of POCSO Act.
- 3. The case was transferred to this Court for disposal. The accused was summoned. On appearance of the accused, copies of the relevant documents were furnished to the accused and upon hearing both sides charges U/S 8 of POCSO Act and Section 354 (A) of IPC were framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial, prosecution examined seven witnesses. At the closure of prosecution evidence, accused was examined U/S 313 of CrPC. The plea of the accused is total denial.

#### **POINTS FOR DETERMINATION:-**

- (i) Whether the accused person on 13.09.2017 at about 7-00 AM touched the breasts of victim xxx, a minor girl, at Hasraobari No.1 village Masjid with sexual intent involving physical contact without penetration and thereby committed an offence punishable U/S 8 of POCSO Act?
- (ii) Whether the accused person on the same day and time touched the breast of victim Sabina Yasmin, a minor girl involving physical contact involving explicit sexual overtures and thereby committed an offence punishable U/S 354 (A) of IPC?

### **DECISION WITH REASONS: -**

- 5. Pw1 xxx, the informant and the father of the victim, deposed that the incident occurred about 1 and half years back at Hasrabari No. 1 Masjid. He had heard that accused has outraged the modesty of his daughter who is aged about 15 years. On being asked by the general public he lodged an FIR. He had put thumb impression in the FIR.
- 6. In cross-examination, PW1 stated that he does not know the contents of the FIR. He also deposed that his daughter had not reported him anything about the occurrence.
- 7. Pw 2 Ms. Khalisa Begum deposed that she knows the victim. She deposed that about 1 and half years back, at about 8 a.m, she and the victim were going towards home after attending their religious classes at Maktab. At that time, accused called the victim and asked her about her education. At this, the victim said that her performance is not good. Accused then rebuked the victim and she started crying. Local people then gathered and apprehended that accused has misbehaved with the victim.
- 8. Pw3 , the victim, deposed that about 1 and half years back, at about 8 a.m, she and Khalisa were going towards home after attending their religious classes at Maktab. At that time accused called her and asked her about her education. When she said that her performance is not good, accused rebuked her and she started crying. Local people then gathered and apprehended that accused has misbehaved with her.

- 9. In cross examination PW3 stated that she gave a statement under Section 164 CrPC as per the instructions given by public.
- 10. Pw4 Md. Anowar Hussain deposed that he had heard that accused had rebuked the victim regarding her education and that due to mistake of fact, the informant lodged a case against the accused.
- 11. Pw5 Ajom Ali Khan deposed that the occurrence took place about 1 year back. In the afternoon hours when he returned from his shop he heard that xxx, the father of the victim, has lodged a case against the accused regarding misbehaviour of the accused with his daughter.
- 12. Pw6 Amir Ali Khan deposed that about one year ago he heard that there was a dispute between xxx, the father of the victim, and accused. Since his house is at a distance he did not inquire the matter any further.
- 13. Pw7 xxx, is the mother of the victim. She deposed that about one year back her daughter had gone to Maktab. She heard that accused had questioned her daughter regarding her education at which her daughter started crying. Soon thereafter villagers assembled and the case was lodged against the accused.
- 14. The evidence of all the material witnesses in this case have ben reproduced above. The evidence makes it apparent that there is absolutely no ingredients of any evidence against the accused regarding the offences charged. In these circumstances, a conviction of the accused cannot be sustained on the charges.
- 15. The points for determination are answered in negative.

## **ORDER**

Accused Habibor Rahman Miah is acquitted of the charges under Section 8 of the POCSO Act and under Section 354 (A) of IPC and set at liberty forthwith.

Given under the hand and seal of this Court on this  $30^{th}$  day of March, 2019.

Dictated by

Addl. Special Judge Kokrajhar Addl Special Judge Kokrajhar

## <u>Appendix</u>

1.	Prosecution	<b>Exhibits</b>	:-

Exhibit-1 Statement

Exhibit-2 Statement of victim

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 xxx, Father of the victim

P.W.2 Ms. Khalisa Begum

P.W.3 Victim

P.W.4 Md. Anowar Hussain

P.W.5 Md. Ajom Ali P.W.6 Md. Amir Ali

P.W.7 xxx, Mother of the victim

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4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Addl. Special Judge, Kokrajhar