#### IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present: - Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

# <u>Spl. (P) Case No. 13 of 2015, U/S 6 of POCSO Act 2012</u> (Arising out of Demow P.S. Case No. 132/2015)

#### State of Assam

-Vs-

Sri Huntu Chutia @ Beka ...... Accused

#### **APPEARANCE:**

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. Ajit Gogoi, Advocate

Date of framing Charge : 13.10.2015

Dates of Evidence : 14.07.2016, 01.08.2017, 15.11.2017,

27.02.2018

 Date of S/D
 : 20.04.2018

 Date of Argument
 : 17.05.2018

 Date of Judgment
 : 31.05.2018

## <u>JUDGMENT</u>

1. Prosecution case, in brief, is that on 25.05.2015, informant Smt. Dipa Taye Gogoi, wife of Sri Baba Gogoi of Koibotra Doloni Gaon, Demow lodged an FIR with O/C, Demow P.S. alleging, inter alia, that on 16.04.2015, at about 6 PM, accused Huntu Chutia came to her residence and took her daughter victim 'J' (name withheld) with him for dancing Bihu at Haluwating Gaon and while taking her through the field, accused misbehaved and attempted to commit misdeed on her. It is also alleged that accused threatened the victim not to divulge the matter to anybody else.

- 2. On receipt of the FIR, Demow P.S. Case No. 132/2015, U/S 12 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody. However vide order dated 18.06.2015, accused was allowed to go on bail. Upon completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 12 of POCSO Act 2012.
- 3. After receipt of Charge Sheet, cognizance of offence is taken and presence of accused was secured. Copy of relevant papers were furnished to him and after hearing both the sides, vide order dated 13.11.2015, the then learned presiding officer has framed charge U/S 6 of POCSO Act, 2012 against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined seven witnesses including the victim and informant.
- 4. On completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence...
- I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. Ajit Gogoi, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

## POINTS FOR DETERMINATION ARE

- 6. (I) What was the age of the victim on the date of incident?
  - (II) Whether on 16.04.2015, the victim 'J' was subjected to penetrative sexual assault? If so, whether accused has committed offence of penetrative sexual assault?

#### **DECISION AND REASONS THEREOF**

7. P.W. 1 the victim in her evidence deposed that her present age is 14 years and she is a student of Class-VI. On the date of incident, while she

went with the accused to Haluwating to perform Bihu, accused took her through the field and by pulling her hand accused touched her body and attempted to commit misdeed. On making hue and cry accused left her. On this, by coming back to the road while she was returning home, accused came there and threatened her not to divulge the matter and took promise. After returning home from performing the Bihu dance, immediately she did not disclose the matter to her parents. After 2-3 days, she informed the matter to her 'Na-bow' Neha Gogoi, who in turn informed the matter to the mother of the victim. On this incident her mother lodged the FIR. Police took her to court where she gave her statement vide Exbt.1. In her cross examination P.W.1 admitted that accused was the group leader of the Bihu Husuri Dol and he was responsible to select the dancer, drummer and others. On the day of incident she went to 2-3 other villages for performing Bihu Husuri. There were four other girls with her in the team, but she did not inform the matter to them. On the day of incident, Tora Chutia, daughter of the accused was also supposed to go with her. She denied the defence suggestion that as she was not selected in the team as dancer she has lodged false allegation. The matter was also informed to Gaonburah.

8. P.W. 2 Smt. Dipanjali Gogoi, mother of the victim in her evidence deposed that about two years back, while she and her husband were at Dibrugarh, accused took away the victim for dancing in the Bihu group and while taking her through the field, accused misbehaved and attempted to commit misdeed on which the victim made hue and cry. After this, victim went to Haluwating and subsequently after returning home she informed the matter to Neha who informed her about the incident. On this she lodged the FIR. In her cross examination she admitted that FIR was written by one Advocate. On the date of incident, upon arrival at Haluwating the victim met the other girls of the Bihu group. She also denied that as the victim was not selected in the team, this false case was lodged. Though the matter was informed to Gaonburah, but he did not take any action.

- 9. PW-3 Mrs. Neha Gogoi, sister-in-law of the victim (Nabou), in her evidence deposed that at the time of Incident of Victim was aged about 12 years. On 16.04.2015 with some reluctance she sent the victim with accused on the plea that two girls and daughter will also go with him for Bihu Dance. On the next day, on return, Victim told her that after sending the other girls, accused took her alone with him, hold her hand and on his attempt to commit misdeed, Victim has to bite his hand. At Bihu field on getting her friend she performed Bihu Dance and returned home with her friend. Accused also restrained her from disclosing the incident to anybody else. In her cross-examination she admitted that while giving statement to police she has not stated that on the next day, on return, Victim narrated the incident as stated in her examination in chief.
- 10. PW 4 Md. Habibul Rahman, Gaonburah in his evidence deposed that on 16.04.2015 while he was at his residence, parents of Victim informed him that their daughter Victim was taken by accused for Bihu Dance and on his way accused attempted to commit rape on Victim. On this, he being Gaonburah and VDP called a village meeting. In the meeting both the sides appeared and started quarrel amongst them. Meeting could not discuss the matter for the said quarrel. On 26.05.2015, police seized original copy of letter to village headman by both the side, statement copy of Victim dated 16.05.2015 given at the meeting, one copy of the Salish Nama signed by Victim and accused Baga Chutia, copy of statement of accused Baga Chutia and copy of signature of attendants present in the meeting. Exbt. 2 is seizure list. In his crossexamination he deposed that while giving statement to police, he has stated that at the very beginning of the meeting, father of Victim threatened him and other to cut and on this meeting was dissolved. Meeting was initiated at the requisition of both sides. He denied the defence suggestion that while giving statement to police he did not state that parents of Victim came to him with allegation fo rape on Victim by the accused.

- 11. PW-5 Sri Sihu Ram Mili, VDP Secretary in his evidence deposed in unison with PW 4 and affirmed the vice Exbt. 2 police seized documents relating to meeting. In his cross-examination he denied the defence suggestion that parents of Victim did not allege for rape on Victim by the accused.
- 12. PW-6 Miss Bibita Taye in her evidence deposed that on 16.04.2015 she along with the daughter of accused and few others went to Halwating for Bihu Dance. Victim also came there subsequently for Bihu Dance. After about seven days of above incident, when they refused to the victim in their group for Bihu Dance at Sivasagar due to her poor performance, she told others that accused committed misdeed with her. She heard this from villagers. She did not ask Victim about this incident. In her cross-examination she stated that their Bihu Dance group was managed by the accused. Accused normally determines about the participants in the dance group. After Halwating, they performed at their own village. After a week, they came to Sivasagar for Bihu Dance. On that day, she came to know that Victim was not selected in the Bihu Dance group.
- 13. PW-7 SI Chittaranjan Iswary, i/o of this case, in his evidence deposed that on the FIR dated 25.05.2015, (Exbt. 3) Demow PS case No. 132/15 u/s 12 of POCSO Act was registered. On 26.05.2015 he went to the place of occurrence i.e. open field at Kaiborta Doloni Gaon as shown by the victim and drawn a sketch map of the PO. Exbt. 4 is the said sketch map. During investigation, he seized the proceedings relating to village meeting in the matter of victim. Exbt. 2 is the seizure list. Exbt. 2(iii) is my signature. On 27.05.2015, he sent the victim for medical examination and also to Court for recording her statement u/s 164 Cr.P.C. On that day accused appeared at the PS and upon arresting him, forwarded to Court for remand. He has also collected the medical report and statement of the victim given on Court. Exbt. 5 is the medical report of the victim issued by Dr. Sadhan Bora of Sivasagar Civil Hospital. In Exbt. 5 medical officer, has opined that the age of the victim is below 16 years and no sign of recent sexual intercourse or no injury was

detected on her person. On completion of investigation, he submitted charge sheet against the accused Hontu Chutia @ Beka u/s 12 of POCSO Act. Exbt. 6 is the charge sheet. In his cross-examination I/O affirmed that witness Neha Gogoi in her statement before him did not state that "on the next day, on return, Victim told her that after sending the other girls, took her alone with him, hold her hand and on his attempt to commit misdeed, Victim has to Bite his hand." I/O has also confirmed that witness Habibul Rahman and Sihu Ram Milli in their statement before him stated that "at the very beginning of the meeting, father of Victim threatened them only and on this meeting was dissolved. He further affirmed that witness Habibul Rahman and Sihu Ram Milli in their statement before him have not stated that "parents of Victim informed that allegation of rape on Victim by the accused."

- 14. <u>Point No. I:</u> So far age of the victim is concerned, while adducing evidence on 14.07.2016, the victim claimed her age as 14 years and a student of Class-VI. P.W.3, sister-in-law of the victim has deposed that victim was aged about 12 years, whereas P.W.4 and P.W.5, the co-villagers has claimed that victim was aged about 14 years. In the medical examination report (Exbt.5) M.O. has opined the age of the victim as below 16 years. No challenge was made by the defence on the above evidence on age of the victim. So from the materials on record, I hold that on the date of alleged incident the victim was aged about 14 years.
- 15. <u>Point No. II:</u> So far allegation of penetrative sexual assault on the victim is concerned, from the record, it appears that no allegation ever been made regarding penetrative sexual assault either in the FIR or in 164 Cr.P.C. statement of the victim or during her evidence in court. The allegation as alleged is of sexual assault only. In the course of argument hearing, learned Special P.P. has submitted that though there was delay in lodging the FIR, but the evidence of the victim so far holding her hands and touched her body in an attempt to commit misdeed on her should be presumed in view of the provision of Section 29 of POCSO Act 2012. On the other hand, learned Advocate Mr. Ajit

Gogoi appearing for the accused has vehemently argued that apart from the unexplained delay of about 37 days, the evidence of victim is neither trustworthy nor reliable. In view of the evidence of P.W. 6, learned Advocate also argued that as the victim failed to get selection in the final dancing team for Bihu, she brought this false allegation against the accused after about 37 days. Non-submitting of FIR even after knowing the incident on the next day clearly shows that nothing happened as alleged by victim and for not selecting her in Bihu Dance Group, to take revenge, accused was framed in this case. Learned Advocate for the defence has also pointed out various discrepancies and submitted that it is a fit case for holding the accused not guilty. I have considered the submission of both the sides.

16. From the evidence of victim it appears that accused took her to Haluwating Gaon for Bihu dance in his team and while taking her through field, accused hold her hand and attempted to commit misdeed on her. After performing Bihu, she returned home and reported the matter to her sister-inlaw Neha Gogoi after 2-3 days who in turn informed the matter to her mother. In her cross examination she admitted that accused was the team leader of the Bihu dance who normally select the dancer, drummer etc. for the Bihu team. After this incident she took part in 2-3 other function with her team-met but did not inform about the incident to them. P.W.2 is the mother of the victim and she is a hearsay witness. She did not inquire the incident from the victim and filed the FIR on knowing the fact from her daughter-in-law. P.W. 3 deposed that on the next day of the incident, victim reported her regarding holding her hand and attempt to commit misdeed by the accused. However in her cross she admitted that before police she has not stated regarding reporting of the matter by the victim on the next day of the incident. This part of exaggeration in statement has been confirmed by the I/O. P.W. 3 in her evidence though deposed that while accused hold the hand of the victim, victim has given a bite in the hand of the accused, but victim is silent on this part. P.W.4, Gaonburah and P.W.5, VDP Secretary deposed about a meeting after one month regarding

alleged incident of attempt to commit misdeed by the accused. According to them the meeting could not discuss the matter on this issue as both the sides started quarrel amongst them. From their evidence it appears that the meeting was organized on 16.05.2015 i.e. after about one month of the alleged incident and police seized the minutes of the meeting. Their evidence about the incident is hearsay as it was reported to them by the parents. P.W. 6 in her evidence as narrated above clearly stated that on the day of incident, the victim came to Haluwating Gaon for Bihu dance and subsequently when they declined to take the victim in their group due to her poor performance, she told others about commission of misdeed by the accused. P.W.7 is the I.O. who did the routine investigation and proved the medical report which shows no injury marks on the victim.

- 17. From the above narration of facts, it appears that there was no eye witness of the occurrence. FIR was lodged after about 37 days. A village meeting was called after 30 days of the alleged incident. No proper explanation was given as to why after knowing the matter on the next day of the incident by P.W. 3, the matter was not reported to police. The delay in lodging the FIR appears to be against normal human conduct and it creates suspicion on the version of the prosecution case, rather I found force on the defence version that as the victim was not selected in the Bihu team on subsequent occasion, out of anger she filed this case. The evidence of the victim alone is found not reliable and trustworthy due to abnormal delay in lodging the FIR.
- 18. It may be noted here that though learned Special P.P. has prayed for invoking Section 29 of POCSO Act 2012 to draw a presumption on the incident, but even if the evidence of the victim is taken at its face value, then also it hardly makes a case U/S 12 of POCSO Act 2012 for which Section 29 of POCSO Act 2012 is not applicable.
- 19. Under the above facts and circumstances, I am of the considered opinion that prosecution has failed to prove the allegation of penetrative sexual

assault or even sexual assault or sexual harassment by the accused beyond all reasonable doubt. As such, accused Sri Huntu Chutia @ Beka @ Boga is acquitted from the charges U/S 6 of POCSO Act, 2012 and set at liberty forthwith.

- 20. Bail bond executed by the accused and his surety stand extended for another six months from today U/S 437-A Cr.P.C.
- 21. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 (A) Cr.P.C.
- 22. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 23. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 31<sup>st</sup> day of May 2018 Sivasagar.

Special Judge, Sivasagar:

## <u>APPENDIX</u>

## 1. Prosecution witnesses:

- P.W.1 Victim
- P.W.2 Smt. Dipanjali Gogoi (Informant)
- P.W.3 Mrs. Neha Gogoi
- P.W.4 Md. Habibul Rahman
- P.W.5 Sri Sihu Ram Mili
- P.W.6 Miss Bibita Taye
- P.W.7 SI Chittaranjan Iswary (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution
  - Exbt.1 164 Cr.P.C. statement of the victim 'J'
  - Exbt.2 Seizure list
  - Exbt.3 FIR
  - Exbt.4 Sketch map
  - Exbt.5 Medical report
  - Exbt.6 Charge-Sheet

Special Judge, Sivasagar: