IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 20 OF 2015

(Under Section 8 of the POCSO Act, arising out of G.R. Case No. 1603 of

2014)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Puspa Debkota,

Son of Sri Gajadhar Debkota,

Resident of Garuduba Police Station – Thelamara Dist:- Sonitpur, Assam

Date of framing Charge :- 30/07/2015

Date of Recording Evidence :- 17/09/2015 & 30/03/2016

Date of examination of accused u/s

313 Cr.P.C

:- 07/02/2017.

Date of Argument :- 07/02/2017.

Date of Judgment :- 07/02/2017.

Counsel for the Prosecution :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. R.R. Kalita, Advocate.

JUDGMENT

- **1.** In this case accused Puspa Debkota is put for trial for allegation of charge under Section 8 of the POCSO Act, 2012.
- 2. The factual matrix of the case in brief is that on or about d2 p.m. of 04-07-2014, the informant's minor daughter victim Miss "X" went to the house of one Dadhiram Foyel. There she (victim) played with their

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daughter who is contemporary of the victim, while they were playing accused enticed the victim and called her inside the house, closed the door, open her cloths, outraged her modesty and attempted to commit rape on her. On hearing raising alarm of the victim, neighbouring people arrived there and rescued the victim. Thereafter, a village meeting was held but the said accused was absconded. Hence, this prosecution case. The ejahar was filed by complainant Smt. Debka Neupani before the O/C of Thelamara Police station on 09-07-2014.

- **3.** On receipt of the aforementioned FIR, the O/C of Thelamara Police station registered a case being Thelamara P.S. Case No. 56/2014 u/s 376/511 of IPC read with section 7 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 376/511 of IPC read with section 7 of the POCSO Act, 2012 against the accused Sri Puspa Debkota.
- **4.** On being appeared the accused before this Court, my learned predecessor-in-Court, after hearing both parties, framed charge under section 8 of POCSO Act, 2012 against the accused 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 six numbers of witnesses which includes the informant, victim and other witnesses
- **6.** After completion of prosecution evidence, learned counsel for the accused submitted to close the evidence on the ground that the statement of the victim and other witnesses no way supported the prosecution case as to the alleged offence. Therefore, even if examined the I.O., prosecution case would not develop. I have also heard the learned Public Prosecutor, Sonitpur, who has also conceded.

I have thoroughly perused the whole case record as well as the statement of witnesses including the statement of the victim. It appears that one of the main witness Sri Dhadhiram Foyel has turned hostile.

Other witness Sri Bhabani Parajuli and Anju Devi reveals no such materials as to the ingredients of the alleged offence. Therefore, considering the materials available in the record, I think that even if examined the I.O., prosecution case would not develop. 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 on or about 2 p.m. of 04/07/2014, at Garuduba, under Thelamara Police station the accused committed sexual assault on "Miss X (aged about 12 years) and thereby committed an offence punishable under section 8 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, the victim Miss "X" stated that one day she went to the house of Dadhi Ram Foyel to bring her chappal. Accused was there inside the said house watching the TV. She went inside the room to bring her chappal. At that time accused closed the door and he kissed her cheek. He also pressed her chest and anus. At that time she cried. During that time her friend Pranita came there. The door of the room was closed but it was not locked. Pranita took her away from the room. Pranita saw accused killing her. After three days, she told the incident to her mother. Lateron her mother informed police. Police took her

statement and sent her for medical examination at Civil Hospital, Tezpur. Magistrate recorded her statement. Ext. 1 is her statement and Ext. 1(1) and 1(2) are her signatures.

In cross-examination, she admitted that she went to the house of Dadhiram at about 2 O'clcok. At that time, Pranita, Dadhiram, Anju and Pavan were there. Her grand-mother was also there. In the house, there were three rooms. She went to take Sangita's chappal. Other people were outside the house, they were talking. The windows/doors of the room where the accused watching TV were opened. The incident happened immediately. She did not tell her mother out of fear. When Pranita told her mother, then she told her mother about the incident. Police took her statement at the police station. Pavan has expired. She knows accused since earlier. Accused is a married person. He has four children. He has one son and three daughters and his daughter was elder than her.

11. PW 2 Smt. Debaka Neopani, stated that she knows accused. Victim is her daughter. The incident took place about 14 months ago. After three days of the incident Kamala told her that accused took her daughter inside the room and kissed her and holds her by arms. When she asked her daughter, her daughter started to cry. Then she went to the house of Dadhiram's house and enquired about the incident. Thereafter, she complained to Mahila Samity. The accused was in his house, however lateron he fled away. Thereafter, she lodged FIR in the Thelamara Police station. The FIR was written as per her dictation. Ext. 2 is the FIR and she gave thumb impression in the FIR. While she asked about the incident her daughter started crying. Police medically examined her daughter and her statement was also recorded by Magistrate.

In cross-examination she admitted that before knowing about the incident from Kamala, she did not know anything about the incident. Kamala informed her at night. When she asked about the incident to Dhadhiram, he was also surprised. When she went to Mahila Samity Gaonburah also went along with her. She informed Mahila Samity after three days of the incident. Many people went to Mahila Samity. She was accompanied to Police station by Gaonburah.

12. PW 3 Dr. Jharna Kakoti, stated before the court that **o**n 10-07-2014 she was working as Sr. Medical & Health Officer in the Kanaklata Civil Hospital, Tezpur and on that day she was on duty in the hospital and at about 2.40 p.m. she examined Miss Puja Devi, 11 years, D/O Sri Matrika Neupani of village Garuduba, PS –Thelmara, in reference to Thelamara PS Case NO. 56/14 u/s 376/511 of IPC , on being escorted and identified by WPC Chitralekha Das, on the examination room of labour room complex of KCH, vide Hospital registration No. 31301/14, in presence of GNM Dipali Devi with the consent of the victim and mother of the victim.

After examination he prepared a medical report which is exhibited as Ext. 3 and Ext. 3(1) is her signature.

13. PW 4 Sri Dadhiram Foyel, who turned hostile. The un-hostile portion of his evidence is that he knows accused Puspa Debkota. He also knows the victim. The incident occurred about one year back. On the day of incidence, he was in his home. After 3 days of the incident the mother of the victim namely, Deboka told him that the accused removed the pant of her daughter when she was watching TV. The accused used to watch TV in his house almost daily.

In cross-examination by defence, he stated that the accused is a married person and he is the father of one son and three daughters. The son of the accused has appeared in the matriculation and fared very well in the examination. No one else has shown such a good result earlier. As his son is good in studies, his wife is proud of that and other ladies of the village are jealous of her. He came to know about the incident after three days of the incidence. The women of their village have concocted a false story to malign the accused and his wife.

- **14.** PW 5, Sri Bhabani Parajuli, stated that he knows accused Puspa Debkota. She also knows the victim. The incident occurred about six months back. On the day of incidence, he was in his home. After 7 days of the incident, he heard that the victim was raped by the accused.
- **15.** PW 6 Smt. Anju Devi has stated that at the relevant time at about 2 p.m. he was watching TV as her husband was in illness. She heard that accused pinches victim on her hands. Ofcourse she has not seen the accused in pinching the victim.

In cross-examination she admitted that while she watching TV along with her husband, accused and her mother were also there. In fact accused asked the victim to go their own house for reading. She further stated that the accused found not touched the body of the girl

- **16.** These much is the evidence of the prosecution case.
- **17.** Learned counsel for the accused submitted that other than the victim none has stated anything about the incident. According to the prosecution stroy though immediately after the incident, the victim stated about the incident to her mother, but her mother did not state so. Besides, this statement of the victim does not show such act alleged to be committed by the accused with sexual intent. learned counsel for the accused again submitted that all the witnesses stated that there is a dispute in between the accused and the complainant as the accused's son is very brilliant. On the other hand, the complainant's daughter victim is not such. Besides, the accused's wife has proud for his son as he was good in studies. PW 4, in whose house the alleged incident took place turned hostile. He admitted that the woman of their village had concocted a false story to malign the accused and his wife. He clearly stated that the complainant has lodged a false case against the acused. Therefore, the accused is required to be acquitted.
- **18.** On the other hand, learned Public Prosecutor, Sonitpur, Tezpur also stated that it cannot be ruled out that the complainant lodged a false case and the women of the village of the accused had concocted a

false story to malign the accused and his wife as stated by PW 4. Besides, the hostile portion of PW 4 is not corroborated with statement of any other witnesses.

- **19.** Keeping in mind, the rival submissions advanced by the learned counsels of both the parties, I am going to dispose of the case as follows.
- **20.** To brought the charge under section 8 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

Section 7 - sexual assault-

"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 issaid to commit sexual assault"

- **21.** Law is well settled that the charge under this type of section is one which is very easy to make and very difficult to rebut, and when such a charge is made it is necessary to see where it is supported by independent evidence. Besides, that of the women herself, or is corroborated by her conduct and surrounding circumstances and is consistent with ordinary and probabilities.
- 22. Here in the present case, the victim stated that at the relevant time, she went to the house of Dadhi Ram Foyel to bring her chappal where accused was inside the house watching the TV. While she went inside the room to bring her chappal, accused closed the door and kissed on her cheek. He also pressed her chest and anus. At that time she cried. After the incident, she told the incident to her mother. Her mother informed police. Thereafter, her statement was recorded u/s 164 Cr.P.C. In cross-examination, she admitted that other people were outside the house and they were talking. The windows/doors of the room where the accused watching TV were opened. The incident happened immediately. She did not tell her mother out of fear. While Pranita told her mother, then she told her mother about the incident. As submitted by learned counsel for the accused, it appears that the

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statement of the victim is such contradictory as in examination-in-chief she stated that the accused after her entry inside the room, closed the door but in cross-examination she admitted that windows/doors of the room remained open at the relevant point of time.

According to PW 2, the mother of the victim, after three days of the incident Kamala told her about the incident and then when she asked her daughter she started to cry. Then she went to Dadhiram's house and enquired about the incident. Thereafter, she complained to Mahila Samity. Thereafter, she filed the FIR. But the prosecution has failed to cite any of the members of the Mahila Samity to whom the PW 2, the mother of the victim immediately informed. Had the mother of the victim being informant really reported the matter to Mahila Samity, prosecution could have examine atleast only one such independent witness from Mahila Samity.

Again, according to the PW 2 on being came to know about the incident she went to the house of Dadhiram Foyel in whose house the incident took place. Sri Dadhiram Foyel is the material witness in this case, but his statement was recorded as PW 4 who turned hostile. He stated that on the day of incident he was in his house. After 3 days of the incident the mother of the victim namely, Deboka told him that the accused removed the pant of her daughter when she was watching TV. The accused used to watch TV in his house almost daily. The hostile portion of his evidence is that "the accused is now also used to come to my house everyday to watch TV". There is no any evidence of instances of any enmity between Dadhiram Foeyl and the informant. Neither there is no any evidence that accused is a close relative of him so to save him he made false statement before this court. He admitted that on the day of incident, he was at his home. There is no evidence that at the relevant time the victim raised alarm. Had the victim really raised alarm, it could be heard not only by PW 4 Dadhiram Foyel and other neighbour persons since the victim admitted that at the relevant time the doors/windows of the house of PW 4 were remained open.

On the other hand, PW 4 Dadhiram Foyel stated that the son of the accused has appeared in the matriculation and fared very well in the examination. No one else has shown such a good result earlier. As his son is good in studies, his wife is proud of that and other ladies of the village are jealous of her. He came to know about the incident after three days of the incident. Besides, he admitted that the women of their village have concocted a false story to malign the accused and his wife. He further stated that he has not stated before police anything as suggested by learned Public Prosecutor during that day. At last he admitted that the complainant had lodged this false case against the accused. Therefore, PW 4 has changed the situation of this case. Other witness PW 5 Bhabani Parajuli and PW Anju Devi have stating nothing any materials against the accused as to the alleged offence.

23. To sum up as stated above, there is no any evidence that at the relevant time the victim raised alarm. Had she raised alarm neighbouring people including the owner of the house i.e. PW 4 might have heard since the evidence is there that at the relevant time the doors/window of the house of PW 4 are remained open. Secondly, PW 4, the owner of the house, has stated quite different story. He clearly stated this is nothing but concocted and false story. Thirdly, the informant stated that on being came to know about the incident she informed the matter to local Mahila Samity but prosecution has failed to adduce evidence of any of the member of local Mahila Samity. Therefore, no independent witness of the prosecution case has supported the prosecution case. Fourthly, the prosecution has failed to examine Pranita and Aita (grand-mother) of the victim. According to victim in the house where the incident took place Pranita, Dadhiram, Anju and Paban were there. Prosecution has failed to procure the attendance of Pranita and Aita. Dadhiram Foyel and Anju Devi no way supported the prosecution case. Fifthly, according to victim, other people were there outside the house where they were talking. Since the doors/windows of the house were remained open, the victim could have

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raised alarm or informed the matter to the persons who were talking

outside.

24. In view of the aforesaid reasons, the solitary evidence of victim

cannot be reliable and convincing to convict the accused in the alleged

charge. Therefore, I am bound to hold that the prosecution has failed to

prove the alleged cahrge against the accused beyond any reasonable

doubt. Hence, the accused Puspa Debkota is acquitted on benefit of

doubt and set him at liberty forthwith.

25. The liabilities of the bailor is hereby discharged.

The GR Case No. 1603/14 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 7th day

of February, 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 :- Victim.

2. Prosecution Witness No.2 :- Smt. Debaka Neupani.

Prosecution Witness No.3
 Prosecution Witness No.4
 Prosecution Witness No.5
 Prosecution Witness No.5
 Prosecution Witness No.6
 Prosecution Witness No.6

EXHIBITS.

Exhibit 1 :- Statement of the victim

Ext. 2 :- FIR

Exhibit 3 :- Medical report.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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