IN THE COURT OF ADDITIONAL SPECIAL JUDGE..... BIJNI.

Present: N.U. Ahmed,

Additional Special Judge,

Bijni.

Special(P) case No. 08(B)/2019

Under section 354 of the IPC R/W section 8 of the POCSO Act.

THE STATE OF ASSAM

-VS -

Sri Pabitra Das Accused.

APPEARANCE:

Advocate for the prosecution

Mr. P. Dev Ray, Ld. Addl. P.P. #

Advocate for the defence

Mr. S. K. Das, Ld. Advocate.

Date of charge

: 20-05-2019.

Date of evidence

: 01-06-19 and 01-08-19.

Date of Argument

: 01-08-19.

Date of Judgment

: 01-08-19.

JUDGMENT

- 1. The prosecution case, in brief, is that on 05-04-2019, prosecutrix lodged an FIR with the O. C. Bijni P. S. alleging that on the same day at about 10 AM she went to the pharmacy of accused Pabitra Das situated at Dangaigaon for purchasing medicine. Accused called her inside a room and on the pretext to check-up her, touch on her private part, her breast and attempt to commit rape on her. She made hue and cry and escape from the hand of accused. Hence, the present case.
- 2. On receipt of the FIR, O/C Bijni P. S. registered the same as Bijni P.S Case No. 101/2019, U/S 354 of the IPC, R/W section 8 of the POCSO Act and started investigation. During investigation I. O. visited the place of occurrence, recorded the statement of witnesses, got her statement recorded under section 164 of the Cr. P. C. and after completion of investigation I.O. submitted charge sheet against the accused Pabitra Das u/s 354 of the IPC, R/W section 8 of the Protection of Children from Sexual Offences Act,

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2012.(hereinafter known as POCSO Act)

- 3. After receiving the charge sheet cognizance was taken u/s 354 of the IPC and u/s 8 of the Protection of Children from Sexual Offences Act, 2012, against the accused Pabitra Das and started a Special(P) case. Copy of the relevant documents were furnished to the accused person as per provision of section 207 of the Cr. P. C. After hearing both the sides learned Advocate and on perusal of case record charge was framed u/s 354 of the IPC, R/W section 8 of the Protection of Children from Sexual Offences Act, 2012 and the contents of charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial prosecution side examined as many as six witnesses including informant and victim. Accused was examined u/s 313 of Cr. P. C. and recorded his statement in separate sheets. The defence case was of complete denial and defence side has not adduced any defence evidence.
- 5. I have heard argument put forwarded by learned advocate of both sides. I have gone through the case record as well as evidence on record.

POINT FOR DETERMINATION

- 6. (i) What was the age of victim "X" at the time of occurrence?
 - (ii) Whether accused on 05-04-19 at about 10 AM at Dangaigaon under Bijni P. S. voluntarily assaulted prosecutrix a minor girl with intending to outrage her modesty and that thereby committed an offence punishable u/s 354 of the IPC?
 - (iii) Whether the accused on the aforesaid dates, time and place sexually assaulted on prosecutrix who is a minor girl and thereby committed an offence punishable u/s 8 of the POCSO Act, 2012?

:DISCUSSION, DECISION AND REASON THEREOF:

- 7. To bring home the charges the prosecution examined six witnesses including the informant as well as victim. Let me scrutinize the evidence on record to decide the points.
- 8. PW1 Songal Singh Daimary in his deposition has deposed that he did not know

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about the incident. PW2 Santoshi Basumatary is the mother of the prosecutrix, in her deposition has deposed that about 2 months back her daughter went to the pharmacy of the accused and she was crying out of pain and her relatives suspected that accused has done something and asked her daughter to file case and her daughter out of misunderstanding lodged the FIR. She has not seen the incident.

- 9. PW3 prosecutrix is the victim as well as informant of the case. PW3 in her deposition has deposed that on 05-04-2019 she was suffering from stomach pain and she went to the pharmacy of the accused for taking treatment. Accused check her and provide her medicine. She returned to her house and out of stomach pain she was crying. On seeing her crying the villager misunderstood that accused committed something and asked her to file case. Thereafter, she filed the case. She proved the FIR as exhibit-1 and exhibit-1(1) is her signature. After filing the case police took her to court and Magistrate recorded her statement. She proved her statement as exhibit-2 and exhibit-2(1) and 2(2) are her signatures. During cross-examination she stated that due to misunderstanding she filed the case and she gave statement before Magistrate on the instruction of villager. The FIR was written by villager and she did not know the contents of the FIR. she further stated that accused has not committed any miss deed with her.
- 10. PW4 Anil Basumatary is the father of the informant. Ongoing through the evidence of PW4 it reveals that he has not seen the incident and villager compelled her daughter to file this case. During cross-examination he stated that due to misunderstanding his daughter filed this case. PW5 Jahnabi Basumatary is the grandmother of the prosecutrix. PW5 in her deposition has deposed that her granddaughter was suffering from stomach pain and for this reason she brought her granddaughter to the pharmacy of the accused. Due to severe pain her granddaughter was crying and people suspected that accused did something and for this reason people compelled her granddaughter to file this case. During cross-examination she stated that due to misunderstanding and pressure of the villager her granddaughter filed this case. PW6 Ganesh Basumatary is the neighbor of the informant. From the evidence of PW6 it reveals that he did not know anything about the incident.
- 11. On the above evidence point No.6(i) is taken first for decision:- The victim girl in her evidence stated that at the time of occurrence her age was 16 years. The defence girls side has not challenged the age of the victim girl. So, it appears that it is admitted fact that at the time of occurrence age of victim girl was 16 years. So, it appears that there is

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no doubt that at the time of occurrence age of victim girl was 16 years and she was child as per provision of section 2(d) of the POCSO Act.

12. Next question arises whether the accused voluntarily assaulted PW3 with an intention to outrage her modesty. To decide this question the evidence of victim girl is most vital. PW3 in her evidence nowhere stated that accused voluntarily assaulted her with an intention to outrage her modesty. Rather during her cross-examination she stated that accused has not committed any miss deed with her. Though PW3 in her statement u/s 164 of the Cr. P. C. stated that accused voluntarily assaulted her with an intention to outrage her modesty but she in her evidence stated that on the instruction of villager she made statement in the court. There is no consistency in the evidence of PW3. Therefore, I find that the evidence of PW3 is not believable. Hence, I have nothing to hesitate to hold that the prosecution failed to prove the charge u/s 354 of the IPC against the accused beyond all reasonable doubts.

Next question arises whether the prosecution able to prove the charge u/s 8 of the POCSO Act or not. Section 8 of the POCSO Act is the penal provision for the offence sexual assault on child. There is no doubt that prosecutrix is a child. The offence sexual assault is define u/s 7 of the POCSO Act, as follows:-

- **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 is said to commit sexual assault.
- 14. Ongoing through the definition of the sexual assault it appears that to constitute such offence either the accused shall touch the private part of the victim or the accused compelled the victim to touch his/her or any other person private part. In this case PW3 is the victim of the case. Though as per provision of section 29 of the POCSO Act cast duty on the court to presume the allegation u/s 3, 5, 7 and 9 of the POCSO Act that such person has committed the offence but in a case the primary burden of prove always lies on the prosecution. The prosecution is to prove some extent of the case and there after the question of presumption would arise. Here in this case the victim child in her evidence nowhere stated that accused touches her private part. Rather during cross examination she stated that accused had not committed any miss deed with her. Though PW3 in her extra the private part is accused touched her breast and vagina, but she in her evidence stated that on the instruction of villager she made statement in the

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court and she due to misunderstanding filed this case. PW3 also in her evidence stated that she did not know the contents of the FIR. There is no consistency in the evidence of PW3. Therefore, I find that the evidence of PW3 is not believable. Hence, I have nothing to hesitate to hold that the prosecution failed to prove the charge u/s 8 of the POCSO Act, against the accused beyond all reasonable doubts.

- 15. From the discussion made above, I find that the prosecution side failed to prove the charges against the accused person beyond all reasonable doubt. Hence, accused Pabitra Das is found not guilty u/s 354 of the IPC and u/s 8 of the Protection of Children from Sexual Offences Act, 2012 and he is acquitted from the charges and set him free at his liberty forthwith. Bail bond furnished by the accused shall remain in force till next six months from to-day as per provision of section 437-A of the Cr. P. C.
- 16. Send a copy of the judgment and order to the District Magistrate, Chirang as per provision of section 365 of the Cr. P. C.
- 17. Considering the fact and circumstance of the case, I find that this is not a fit case to recommend the DLSA, Chirang for victim compensation u/s 357-A Cr. P. C.
- The seized birth certificate be given to the prosecutrix/informant in due course of 18. time.

Given under my hand & seal of this court on this the 1st day of August, 2019.

Additiona

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APPENDIX

(A) Prosecution witnesses:

PW1- Songal Daimary

PW2- Santoshi Basumatary

PW3- Prosecutrix.

PW4- Anil Basumatary

PW5- Jahnabi Basumatary

PW6- Ganesh Basumatary

(B) Prosecution exhibit-

Ext.1- FIR.

Ext.2-Statement of victim girl.

(C) Defence witnesses- Nil.

(D) Defence exhibit- Nil.



Additional Special Judge,

Additional Special Judge
Bijni