#### IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

Special POCSO Case No. 59/2017 (Arising out of G.R. Case No. 4517/2017) U/S 12 of POCSO ACT, 2012

PRESENT: Sri Chatra Bhukhan Gogoi Special Judge, Barpeta.

**Charge framed on:-** 05.05.2018

State of Assam

- Vs -

Mazam Khan....Accused person.

Date of Recording Evidence on - 05.01.2019

Date of Hearing Argument on - 05.01.2019

Date of Delivering the Judgment on - 05.01.2019

### Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. A. Mannan, Ld. Advocate.

#### **JUDGMENT**

- 1. The prosecution case, in brief, is that on 16.09.2017 one Sanowar Hussain lodged an FIR in Barpeta police station alleging inter-alia that on 15.09.2017 after the end of school, while his girl student namely-(X) was proceeding to house accused restrained her on her way and touching her body, pulled her school bag and put a mobile phone number in the bag directing her to love him and call him in the number. Seeing this one Ajijul Hoque came to rescue her following which accused left the place but subsequently, he again disturbed the girl while coming to school. But then accused was caught with the help of other students. Hence, the case for taking action in accordance with law.
- 2. Following the information as above, Barpeta police station registered a case being Barpeta P.S. Case No.1582/2017 u/s 341/352/506 IPC R/W section 12 of POCSO Act and investigated the case.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statements of the witnesses and on completion of investigation police finally laid the charge sheet u/s 341/352/506 IPC R/W section 12 of POCSO Act with the view to stand trial.
- 4. During the course of time, when accused entered his appearance in court, having heard the learned counsels appearing for both sides and perusing the materials

available on record vide order dated 05.05.2018 charges u/s 12 of POCSO Act was framed. The substance of the offence on being read over and explained accused pleaded not guilty and claimed trial.

- 5. During the course of trial, prosecution, however, examined only 2 witnesses namely- the informant as PW-1 and the alleged victim as PW-2. However, during the course of their evidence, considering the quality of evidence adduced by both the prosecution witnesses, learned Addl. P.P. submitted that proceeding further with the case would be nothing but a meaningless exercise as the main witnesses are not supporting the prosecution case. Hence, hearing the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked, accused person declined to adduce defence evidence.

## 7. Now point for determination ;-

1. Whether on 15.09.2017 accused committed sexual harassment upon the victim girl (X) punishable u/s 12 of POCSO Act 2012 as alleged ?

## 8. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the learned lawyers appearing for both sides and carefully scanned the documents and evidence available on record for arriving at a just decision in the case.

- 9. At the first instance, the learned Addl. P.P. submitted that the star witnesses of the prosecution is not supporting the case. Therefore, going further with the recording of evidence of remaining witnesses would be a meaningless exercise.
- 10. Supporting this contention, learned defence counsel contended that it is a totally false and fabricated case against the accused person. So, prosecution failed to bring home the guilt, particularly by the alleged victim girl. Therefore, the defence counsel contended that it a fit case to record judgment of acquittal on the ground of insufficient evidence.
- 11. Having heard the rival contention of the learned counsel and on careful perusal of evidence of both sides it transpires that PW-1 is the Principal of Banglipara High Madrasa School and he lodged the FIR on the basis of oral intimation made to him by the alleged victim girl and other students. So, he is not an eye witness to the alleged occurrence. His evidence is purely hearsay in nature and no credibility can be placed on his evidence unless supported by evidence of other prosecution witnesses.
- 12. Here in, the alleged victim girl has been examined by prosecution as PW-2, who during the course of her deposition failed to implicate the accused with the alleged offence u/s 12 of POCSO Act. According to her, while she was proceeding to her house

in her bicycle after school her bicycle hit with the bicycle of accused Mazam Khan as a result of which she fell on the ground. On reaching home she found a piece of paper in her bag in which a mobile number was written there. On reaching the school on the next day she narrated the incident to Principal following which a case was lodged. But in her evidence she has not stated anything specifically to show that the accused utters any words or makes any sound or gesture with intention that it will be heard by her or repeatedly or constantly followed her by him or did any such act concerning any sexual activity in any form or manner. She simply stated that her bicycle hit the bicycle of accused on the road and nothing else.

- 13. Therefore, from her evidence no conviction can be sustained u/s 12 of POCSO Act for commission of acts enumerated in section 11 of POCSO Act. The ingredients of offences described in section 11 of POCSO Act has not been attracted in the course of her evidence of the prosecution witnesses for sustaining conviction of accused u/s 12 of POCSO Act. Since the evidence of the alleged victim herself is unsubstantiated one going for record evidence of other prosecution witnesses also useless exercise at the cost of valuable time and energy of court.
- 14. Therefore, this court has no option but to record the judgment of acquittal of accused Mazam Khan from the alleged offence u/s 12 of POCSO Act on the ground of insufficient evidence which this court hereby do.
- 15. In the result, accused is acquitted from the charge u/s 12 of POCSO Act forthwith.
- 16. His bail bond stand canceled and surety is discharged.
- 17. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 18. Given under my hand and seal of this Court on this 5th day of January. 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

# **APPENDIX**

1. The prosecution has examined the following 2 nos. of witnesses :-

```
PW-1 = Sanowar Hussain, the informant.
PW-2 = is the victim (X).
```

2. The prosecution exhibited only one document:

Ext.1 = is the FIR.Ext.1(1)=is the signature of informant Sanowar Hussain.

> Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.