## **HEADING OF JUDGMENT IN SPECIAL CASE**

## IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special (POCSO) Case No- 10 of 2016

### u/s 10 of POCSO Act

#### **STATE**

### **Versus**

# 1. Nil Kumar Roy

S/O Lt. Satish Ch. Roy,
R/O Vill- Sasargaon
PS- Sapatgram, Dist- Dhubri, Assam

## **Accused person**

(Corresponding to GR case No- 1639/16 u/s 10 of POCSO Act)

### Advocate appeared:-

For the state:- Mr. T. Kr. Bhattacharya, Special P.P.

For the accused:- Smt. Syeda Afruza Akhtar, Advocate.

Date of institution of the case :- 06-10-16

Date of Framing charge :- 27-02-17

Date of prosecution evidence :- 08-02-18, 30-08-18, 30-01-19

Statement of accused recorded on :- 25-02-19

Date of Argument :- 25-02-19

Judgment delivered :- 28-02-19

## **JUDGMENT**

### **Prosecution Case**

Prosecution case as reveal from Ext-1 ejahar is that on 05-10-16 at 1. about 11.00 am while informant's daughter Miss X<sub>1</sub> (name changed hereinafter read as Miss X<sub>1</sub>) in her class room at Simlabari School, accused Nil Kumar Roy (head master) came and sit behind her and started to touch private parts of Miss  $X_1$  aged about 11 years old. To that Miss  $X_1$  cried and rushed to her home and on the same day at about 04.00 pm informant came to know about the incident from her daughter in law Amina Begum and then on being asked Miss X1 told about the incident to informant and Miss X1 further stated before the informant that accused Nil Kumar Roy had also sexually harassed six times to others students Miss X<sub>2</sub>, Miss X<sub>3</sub>, Miss X<sub>4</sub>, Miss  $X_5$  and Miss  $X_6$  ( name of all the aforesaid girl are changed and herein after read as Miss  $X_2$ , Miss  $X_3$ , Miss  $X_4$ , Miss  $X_5$  and Miss  $X_6$ ) and said 5 students also narrated about the incident before the public while incident on informant's daughter Miss X1 came into light. To this fact, informant Anjuma Bibi lodged written ejahar before O/C Sapatgram PS.

#### **Investigation**

2. Officer in charge Sapatgram PS, on receipt of ejahar from informant Miss Anjuma Bibi registered a police case vide Sapatgram PS case no. 159/16 u/s 10 of POCSO Act and SI Dipak Das was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet u/s 10 of POCSO Act against the accused Nil Kumar Ray and cognizance taken.

### **Charge**

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 10 of POCSO Act was framed against the accused Nil Kumar Ray and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

#### **Trial**

4. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 10 number of witnesses and exhibited 7 nos. of documents. PW-1 Samina Bibi, PW-2 Minara Begum, PW-3 Aklima Akon, PW-4 Anjuma Bibi, PW-5 Miss  $X_1$ , PW-6 Miss  $X_2$ , PW-7 Miss

X<sub>3</sub>, PW-8 Miss X<sub>4</sub>, PW-9 Miss X<sub>5</sub>, PW-10 Miss X<sub>6</sub>. Ext-1 Ejahar, Ext-2, Ext-3, Ext-4, Ext-5, Ext-6, Ext-7- Statement of victim girls recorded u/s 164 Cr.P.C. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is denial, however declined to adduced evidence in support of the plea of denial.

### 5. **POINTS FOR DETERMINATION:-**

i) Whether accused on 05-10-16 at about 11.00 am at village Simlabari under Sapatgram PS, committed aggravated sexual assault on victim girls Miss X<sub>1</sub> Miss X<sub>2</sub>, Miss X<sub>3</sub>, Miss X<sub>4</sub>, Miss X<sub>5</sub> and Miss X<sub>6</sub> students of 1223 No. Simlabari L. P School being headmaster of same school?

### **ARGUMENT**

6. I have heard ld. counsel for both sides. It has been argued by the ld. defence counsel that informant as well victims of this case did not supported the prosecution case and from their evidence it is reveal that no such incident was took place as alleged in the ejahar and therefore accused entitled acquittal.

#### PROSECUTION EVIDENCE

- 7. Evidence of PW-1 Samina Bibi and PW-2 Minara Begum is that they know informant, victim girls and accused person but they have no knowledge about the case. Defence declined to cross examine PW-1 and PW-2.
- 8. PW-3 Aklima Akon deposed she knows informant, victim girls and accused and her son studied in Simlabari School and she heard that some altercation took place but she does not have any idea why this case has been filed. Defence declined to cross examine PW-3.
- 9. PW-4 Anjuma Bibi is the informant of the case. Her evidence is that accused is teacher of Simlabari LP School and victims girl are the student of Simlabari LP School where accused is school teacher. She deposed about 2 years back, one dispute took place in between village people and accused person and her husband was also one of the member of said dispute and after altercation, village people filed case against the accused and she put her signature on Ext-1 ejahar vide Ext 1 (1). **In cross** she stated accused had filed cross case against her husband and villager. She stated the dispute which was took place about two years back in between village people and

accused was settled and presently she has no grievances against the accused.

- 10. PW-5 Miss X<sub>1</sub> deposed informant is her mother and accused was her primary school teacher. She deposed she heard that two years back some incident of altercation took place in between villagers and accused Nil Kumar Roy and her father was also present amongst villagers at the time of altercation. She deposed accused Nil Kumar Roy did nothing with her. She further deposed after lodging of ejahar, police produced her before the doctor for medical examination and also produced her before the Magistrate wherein she made statement before the Magistrate. She further deposed presently she is unable to recollect what statement she made before the Magistrate. Defence declined to cross examine PW-5.
- 11. PW-6 Miss  $X_2$  deposed she knows informant, mother of Miss  $X_1$  and accused Nil Kumar Roy who was her primary school teacher. She deposed she does not know why informant lodged case against the accused as at that time she was child. She deposed earlier she was produced before the Magistrate by the police and she made statement before the Magistrate. **In cross** she stated no incident was took place with her and accused did nothing with her.
- 12. PW-7 Miss  $X_3$  deposed she knows informant, mother of Miss  $X_1$  and accused Nil Kumar Roy who was her primary school teacher. She deposed no incident was took place with her and accused headmaster Nil Kumar Roy did nothing with her and she can't say why informant lodged case against the accused. She deposed after lodging of ejahar, two years back, police recorded her statement and produced her before the Magistrate and she made statement before the Magistrate but presently she is unable to collect what statement she made before the Magistrate. Defence declined to cross examine PW-7.
- 13. Evidence of PW-8 Miss  $X_4$  is that she knows informant ,mother of Miss  $X_1$  and accused Nil Kumar Ray who was her teacher of 1223 No. Simlabari L.P School. She deposed she does not know why informant lodged the case. While she was student of class V, police recorded her statement and produced her before the court, where in she made statement before the Magistrate but presently she is unable to recollect what statement she made before the Magistrate. **In cross** she stated accused was class teacher of her primary school and accused did not misbehave with her or other student.

- 14. Evidence of PW-9 Miss  $X_5$  is that she knows informant, mother of Miss  $X_1$  and accused Nil Kumar Roy who was her teacher of 1223 No. Simlabari L.P School. She deposed she does not know why informant lodged the case and informant did not talk with her before lodging the case against the accused. She deposed one day police produced her before the court and she made statement before the Magistrate and at that time she was student of class V. She further deposed no incident was took place with her and presently she is unable to recollect what statement she made before the Magistrate. **In cross** she stated accused Nil Kumar Ray was her class teacher of her primary school and accused did not misbehave with her or with other student. She further stated she does not know the reason for lodging of the case by the informant against the accused.
- 15. PW-10 Miss  $X_6$  deposed she knows informant, mother of Miss  $X_1$  and accused Nil Kumar Ray who was head teacher of her earlier school 1223 No. Simlabari L.P School. She deposed no incident was took place with her and she does not know why informant lodged this case. She deposed earlier while she was student of class V, police brought her from her house and produced her before the court where in she made statement before the Magistrate. She further deposed presently she is unable to recollect what statement she made before the Magistrate. **In cross** she stated accused Nil Kumar Ray was her class teacher at her primary school and accused did not misbehave with her or with other student. She stated she does not know the reason for lodging the case by informant against the accused.

### **DISCUSSION, DECISION & REASON THERE OF:-**

- 16. Prosecution allegation leveled against accused Nil Kumar Roy is that on 05-10-16 at about 11.00 am at village Simlabari under Sapatgram PS, accused Nil Kumar Roy committed aggravated sexual assault on victim girls Miss  $X_1$  Miss  $X_2$ , Miss  $X_3$ , Miss  $X_4$ , Miss  $X_5$  and Miss  $X_6$  students of 1223 No. Simlabari L. P School being headmaster of same school.
- 17. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of aggravated assault on his students by accused Nil Kumar Ray.
- 18. PW-4 is the informant of this case. Her evidence pointed two years back one dispute took place in between village people and accused and her husband was also present in the said dispute and thereafter village people lodged ejahar against the accused. Cross of PW-4 is that due to

misunderstanding, case has been lodged and said dispute that took place in between accused and village people is settled. From the evidence of PW-4 it is seen that she subsequently changed her statement and bring different story before the court. Evidence of PW-4 made before the court did not substantiate her statement which PW-4 made in her ejahar. While adducing before the court, PW-4 did not alleged that accused Nil Kumar Ray had committed aggravated sexual assault on her daughter PW-1 and other victim girls at 1223 No. Simlabari L. P School situated at Simlabari village. Thus seen that PW-4 informant of the case did not support the prosecution case and she totally overturn the prosecution case.

- 19. PW-5, PW-6, PW-7, PW-8, PW-9 and PW-10 are the alleged victim girls of the case. Their evidence pointed that they all read at 1223 No. Simlabari LP School and accused Nil Kumar Ray was headmaster of the said PW-5, PW-6, PW-7, PW-8, PW-9 and PW-10 while adducing their evidence before the court stated that accused neither misbehaved with them nor did something to them. Their evidence further shown they have no idea why this case has been lodged against the accused. PW-5, PW-6, PW-7, PW-8, PW-9 and PW-10 while adducing their evidence before the court did not state that accused Nil Kumar Roy had sexually assaulted on them in the class room on different occasions. Their evidence does not point any incriminating material against the accused Nil Kumar Roy. Evidence of PW-5, PW-7, PW-8, PW-9 and PW-10 further pointed they cannot recollect what statement they made before the court while they were produced before the Magistrate. Therefore prosecution exhibited documents Ext-2, Ext-4, Ext-5, Ext-6, Ext-7 cannot be acted upon in absence of corroboration from the evidence of PW-5, PW-7, PW-8, PW-9 and PW-10.
- 20. PW-1, PW-2 and PW-3 shown their total ignorance about the incident and therefore their evidence does not enlighten the prosecution case.
- 21. Aggravated sexual assault is defined under section 9 of the POCSO Act, which is read as under-
- "9. Aggravated Sexual Assault
  - **a.** Whoever, being a police officer, commits sexual assault on a child-
    - within the limits of the police station or premises where he is appointed; or

- ii. in the premises of any station house whether or not situated in the police station to which he is appointed; or
- iii. in the course of his duties or otherwise; or
- iv. where he is known as, or identified as a police officer; or
- **b.** Whoever, being a member of the armed forces or security forces, commits sexual assault on a child-
  - i. within the limits of the area to which the person is deployed; or
  - ii. in any areas under the command of the security or armed forces; or
  - iii. in the course of his duties or otherwise; or
  - iv. where he is known or identified as a member of the security or armed forces; or
- c. Whoever being a public servant commits sexual assault on a child; or
- d. Whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or
- **e.** Whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- **f.** Whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or
- g. Whoever commits gang sexual assault on a child.
  - Explanation.- when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
- **h.** whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

- i. whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- j. whoever commits sexual assault on a child, which
  - i. physically incapacitates the child or causes the child to become mentally ill as defined under clause (I) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
  - ii. inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- **k.** whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- whoever commits sexual assault on the child more than once or repeatedly; or
- **m.** whoever commits sexual assault on a child below twelve years; or
- n. whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
- **o.** whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- p. whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- **q.** whoever commits sexual assault on a child knowing the child is pregnant; or
- whoever commits sexual assault on a child and attempts to murder the child; or
- **s.** whoever commits sexual assault on a child in the course of communal or sectarian violence; or

- t. whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- u. whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault."
- 22. From the scrutiny of entire evidence on record, especially from the evidence of informant and victim girls it is reveal that their evidence does not pointed any single material against the accused Nil Kumar Roy and from their evidence not a single ingredient of section 9 of POCSO Act is coming out against the accused Nil Kumar Roy. Moreover, their evidence totally over turn the prosecution case and bring different story that goes in favour of the accused person.
- 23. In view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution totally failed to bring home charge u/s 10 of POCSO Act against the accused Nil Kumar Roy. Accordingly accused Nil Kumar Roy is acquitted from the charge of section 10 of POCSO Act and set at liberty.
- 24. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 25. Given under hand and seal of this Court on this 28<sup>th</sup> day of February, 2019 at Bilasipara, Dist- Dhubri.

(Smti S. Bhuyan)

Special Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan) Special Judge, Bilasipara

Typed by, Swmkhwr Brahma, Stenographer Gr. III.

# **APPENDIX**

## PROSECUTION WITNESS:-

PW-1 Samina Bibi,

PW-2 Minara Begum,

PW-3 Aklima Akon,

PW-4 Anjuma Bibi,

PW-5 Miss X<sub>1</sub>,

PW-6 Miss X<sub>2</sub>,

PW-7 Miss X<sub>3</sub>,

PW-8 Miss X<sub>4</sub>,

PW-9 Miss X<sub>5</sub>,

PW-10 Miss X<sub>6</sub>.

# PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2, Ext-3, Ext-4, Ext-5, Ext-6, Ext-7- Statement of victim girls recorded u/s 164 Cr.P.C

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara