# CAUSE TITLE POCSO Case No. 68/15

Informant: The victim 'X'.

Accused: Sri Ram Narayan Sah,

S/o- Late Sewcharan Sah, R/o- Panisukia Bangaon,

PS- Namrup, District- Dibrugarh.

## ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Sri S Goswami, learned Advocate.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 68/15 G.R. Case No. 1700/15

> > State of Assam

-Vs-

Sri Ram Narayan Sah

Charges: Under Section 8 POCSO Act.

Date of evidence on : 16-02-16, 16-03-16 & 12-08-16.

Date of argument : 18-04-17. Date of Judgment : 17-05-17.

#### **JUDGMENT**

- 1) The prosecution case in brief infra is that the minor victim X who was a student of Class-IX used to commute to her school from Dillighat colliery in a public vehicle. On 27-06-16, the victim was proceeding to appear for halfyearly examination in a Winger vehicle bearing registration No. AS-04-AC-1667 at about 10:45 am. At that time, the owner of the vehicle Sri Ram Narayan Sah (hereinafter the accused) groped her and touched her chest and outraged her modesty. When she tried to resist, the accused rebuked her and asked her to be silent. As she was terrified, she kept mum. Thereafter, the victim in retaliation slapped the accused. At that time, Lakhimai who was in the vehicle also protested against this act and other 4/5 passengers travelling in the vehicle were in an inebriated condition. Prior to this incident, the accused also groped her several times in an indecent manner. She misunderstood his overtures to be results of jerking of the vehicle. The victim had undergone unbearable pain and agony due to such act of the accused. An ejahar regarding this incident was lodged with the Namrup Police Station which was registered as Namrup Police Station Case No. 101/15 under Section 354 of the Indian Penal Code (IPC in short) read with Section 8 of the Protection of Children from Sexual offences Act (POCSO in short).
- 2) The Investigating Officer (IO in short) SI Gouranga Dey embarked upon the

investigation. He forwarded the victim to the Magistrate for recoding her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). He also forwarded the victim for medical examination. He went to the place of occurrence, prepared the Sketch-Map and recorded the statements of the witnesses. Finding prima facie materials against the accused, he submitted Charge-Sheet under Section 354 of the IPC, read with Section 4 of the POCSO Act.

- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 8 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of seven witnesses including the IO. The defence cross-examined the witness in extenso to refute the charges. On the circumstances arising against him, the accused answered that a false case has been foisted against him as the victim and her father used to raid his grocery shop continuously and were unwilling to repay him the dues. They used to throw their weight around and used to rebuke him on being a Bihari. The remaining part of his answers under Section 313 CrPC reflects the plea of total denial.

### **SUBMISSIONS:**

5) The learned Public Prosecutor Smt. R. Devi submitted that this case has been proved beyond a reasonable doubt and stringent punishment ought to be inflicted on the accused considering the depravity of his act. Learned defence counsel Sri Sudeb Goswami laid stress in his argument that a false case has been foisted against the accused. The victim and her father who used to take cold drinks from the accused person's grocery shop, had to repay the dues. As they were unwilling to repay the dues, they filed a false case against the accused.

#### POINT FOR DETERMINATION

1. Whether on 27-06-15, the accused committed sexual assault on the minor victim X inside the Winger vehicle while the victim was travelling to her school?

## **DECISION AND REASONS THEREOF**

6) To decide the case in its right perspective, it is necessary to delve into the evidence.

- 7) The victim X testified as PW-1 that the accused is her neigbour who is the owner of a Winger. She used to commute to her school from her house in the Winger belonging to the accused. Her half-yearly examination commenced from 22-06-15. During her examination, she used to board the Winger belonging to the accused at about 10:00 am and the accused also used to travel in the said Winger as the Conductor. Usually, whenever she used to travel in the Winger, the accused is to sit beside her and he used to take the advantage and nudge her with his elbow against her breast. Earlier, she used to think that as a result of the bumpy roads and the jerking in the vehicle, the accused person's elbow must have accidentally brushed against her chest. As she used to feel uncomfortable, she used to ask the accused to take another seat on the backside, but the accused used to rebuff that the passengers had to sit there. She commuted to her school up to 27-02-15 as there were no vehicles by which she could reach in time for her examination. On 27-06-15, she boarded the vehicle to commute to her school. On that day, she sat on the 2<sup>nd</sup> row of the seat of the vehicle which is a folding seat and the accused sat on her left side and with his right hand, he groped her and touched the right part of her breast. His hands also brushed against the body of another lady who was sitting beside her. The lady rebuked and scolded the accused and asked him to sit in another place. Then the accused went away. Thereafter, the accused again came near her (PW-1) and sat near her and placed his hands on the back of the front seat and with his left hand, he pressed her breast. She pushed his left hand away and told another lady that the accused touched her. The accused made an excuse and claimed that he was scratching his own armpit which was itching due to the sweat. She repeatedly asked the accused not to act in this manner.
- 8) PW-1 further testified that another lady also asked the accused why he was behaving in such a manner with her. The lady rebuked the accused for misbehaving with a little girl like her (PW-1), but the accused kept denying the allegations which enraged her. As she was enraged, she slapped the accused. Thereafter, she alighted from the Winger and reached her destination and while leaving, she threatened the accused to stay away from her house, lest she would take him to task. After appearing for her examination, she returned home at about 2:30 pm. After reaching home, she informed about the incident to her parents. Her mother told her father to call

the accused and confront about the incident. Then her father and her paternal uncle went to the accused person and asked him about the incident. They told the accused that she (PW-1) had called him and she was crying. The accused promised to come to their house, but he did not. Learning about the incident, some neighbourers came to their house to inquire about the incident. The accused person's elder son also came to her house and told her that the accused would be coming, but he did not come to her house. Meanwhile, it was evening and the villagers assembled in their house. As the accused did not come to their house, the villagers went to the accused person, but found no one inside the house. The villagers indulged in vandalism and damaged the accused person's Winger and his shop. A reporter named Tilu Lahon wrote the ejahar as per her narrative. She read the contents of the ejahar and affixed her signature. Her father went to the police station and lodged the ejahar on the same evening. On the following day, she went to the police station and the police recorded her statement and forwarded her to the hospital for medical examination. As she did not have any medical problem, she did not allow the doctor to examine her. She gave her statement before the Magistrate in the Court. Ext. 2 is her statement and Ext. 2(1) is her signature. Ext. 1 is the ejahar and Ext. 1(1) is her signature. The victim's testimony reiterates her statement under Section 164 CrPC and the contents of the FIR.

9) The evidence of PW-1 is corroborated by the evidence of her mother. Smti. Santi Lahon testified as PW-2 that her daughter was 14 years at the time of incident. Since 22-06-15, her daughter has been appearing for her half-yearly examination upto 27-06-15. On the day of the incident, i.e., on 27-06-15, after appearing her examination, her daughter X returned home and informed her that while she was travelling in the Winger vehicle owned by the accused, the accused who was also in the vehicle touched her chest. At that time, her father was not present and she told her daughter that she would inform the matter to her father. Her daughter kept on complaining about headache after the incident and she would hardly partake any food. When her husband arrived, her daughter started crying and created 'halla'. Her husband thought that the accused pinched her daughter. Her daughter repeatedly kept on shouting that the accused must be punished and she wanted to meet the accused. As her daughter was unstable, her husband

wanted to go to the accused person's house to find out what happened. Accordingly, her husband went to the accused person's house and the accused assured that he would come to their house, but he did not turn up. Thereafter, her husband went to the accused person's house 3-4 times, but the accused did not come to their house. Thereafter, the neighbouring people learnt about the incident and came to their house. Her husband lodged an ejahar with the police. When her husband went to the police station, he found the accused person in the police station. On the same evening, the police visited their house and recorded their statements. Her daughter was taken to the hospital for medical examination, but her daughter refused medical examination.

- 10) A corroborative part of the evidence of the PW-1 & 2 is that PW-1's father lodged the ejahar with the police on the same evening. It is true that the ejahar was written by another person and signed by PW-1, but PW-1's father lodged the ejahar which has been testified by PW-1 & 2 as well.
- 11) The evidence of PW-1 & 2 is corroborated by the evidence of PW-3 who is the victim's father and PW-2's husband. Sri Palash Lahon testified as PW-3 that on the day of occurrence, his daughter X went to her school for her halfyearly examination before the summer vacation. On the evening of the incident, he reached home at about 4:30 pm and found that his daughter was crying and she told him that the accused had done something to her. Then his elder daughter Smti. Archana Lahon told him that X told her that the accused touched her chest. Then he went to the accused person's house accompanied by his relative Sri Arup Konwar to find out about the incident. He found the accused as well as his driver in his house and asked him what he had done to his daughter because she has been crying since her return from the school. He asked the accused to come to his house as his daughter was crying ceaselessly, but the accused paid no heed. Thereafter, he returned to his house and found a large gathering in his house. As the accused did not come to his house, he again went to the accused person's house and found him having tea. He again asked the accused to come to his house, but the accused did not visit his house. He went to the accused person's house 3-4 times, but the accused did not visit his house. His younger brother also went to the accused person's house whilst the accused person's son visited their house. Thereafter, he along with his wife and his victim daughter went to the

- accused person's house and found that the villagers indulged in vandalism. Thereafter, the police arrived. He lodged an ejahar with the police. The police recorded his statement. His daughter narrated the entire incident in detail to her mother and her mother in turn gave a detailed narration about the incident to him.
- 12) The evidence of PW-3 corroborates the evidence of PW-1 & 2 regarding the lodgment of the ejahar. PW-3 also testified that he lodged the ejahar with the police. The evidence of PW-1 is corroborated by the evidence of PW-2 & 3 regarding the fact that when the PW-3 returned home after work, he found PW-1 crying and raising 'hulla' and then PW-2 informed PW-3 about the incident. PW-1, 2 & 3 stated that Sri Palash Lahon asked the accused to come to his house and the accused promised to visit his house, but the accused ignored him. Thereafter, Sri Palash Lahon went to the accused person's house 3-4 times and requested him to come to his house regarding the incident, but the accused did not come. Both the PW-1 & 3 testified that Sri Palash Lahon (PW-3) accompanied by a relative went to the accused person's house to find out about the incident and when the accused person did not come to their house, the accused person's son came to their house. PW-1 & 3 stated that later in the evening, the villagers who learnt about the incident vandalised the accused person's properties. But the PW-1 & 2 testified that the victim PW-1 refused medical examination. The cross-examination of the witnesses will be discussed at the appropriate stage.
- 13) The evidence of PW-1, 2 & 3 is also supported by the evidence of PW-4 Smti. Pori Bora Lahon. She testified that X is her niece and the incident took place on 27-06-15. On that day, at about 4:30 pm, she heard a commotion emanating from the victim's house and went there and found that the victim was crying. On being asked, the victim's mother informed her that while the victim went to the school in the Winger belonging to the accused, the accused Ram Narayan Sah misbehaved with the victim and as a result the victim was under depression and she did not ask the victim about the incident. The victim's father went to the accused person's house and called him to his house, but the accused did not come to the victim's house. Meanwhile, several people assembled in the victim's house and at about 7:00 pm. police arrived in the accused person's house. Later, she learnt that a case was filed in the Namrup Police Station and on the next day, police recorded

her statement. Her cross-examination is not noteworthy.

- 14) Smti. Tulumoni Lahon testified as PW-5 that the victim is her niece and the accused is known to her. The incident took place on 27-06-15. She received a phone call from the victim and went to her house and found the victim crying. She learnt that on that day, the victim went to the school for her examination in the Winger vehicle belonging to the accused person and the accused misbehaved with her and touched her breast. Several villagers gathered in the victim's house and a case was filed by the victim. Her cross-examination is also not noteworthy.
- 15) The evidence of PW-1, 2, 3, 4 & 5 is also supported and augmented by the evidence of Sri Trilochan Baruah who testified as PW-6 that both the accused person and the victim are known to him. The incident took place in the month of June, 2015. On that day, in the evening, the victim's father told him that his daughter went to the school in the Winger belonging to Ram Narayan Sah and Ram Narayan Sah touched his daughter's body with bad intention and his daughter has been weeping since her return from the school. He suggested Sri Palash Lahon to confront the accused about the incident. On repeated calls by Palash Lahon, the accused did not come to his house, but fled away. Later on, an ejahar was filed with the Namrup Police Station. His cross-examination is also not noteworthy.
- 16) Thus the evidence of all the witnesses garnered by the prosecution is corroborative and there is not even a slightest contradiction to refute the charges. There is clinching evidence that the accused is complicit, because the evidence of all the witnesses is also corroborated by the evidence of the IO. This is indeed an open and shut case.
- 17) SI Gouranga Dey is the IO of this case and he testified as PW-7 that on 27-06-15, while working as an Attached Officer at Namrup Police Station, an ejahar was received from X and was registered as Namrup Police Station Case No. 101/15 under Section 354 IPC, read with Section 8 of the POCSO Act. He was entrusted with the investigation by the In-Charge. Ext. 1 is the ejahar and the Ext. 1(2) is the signature of the Officer-in-charge which is familiar to him. The complainant came to the police station along with her parents and he recorded their statements in the police station. Thereafter, he proceeded to the place of occurrence accompanied by his staff. He prepared the Sketch-Map Ext. 3 where Ext. 3(1) is his signature. He recorded the statements of

other witnesses and searched for the other witness Lakhimai, but could not find her. He forwarded the victim for medical examination and also for recording her statement under Section 164 CrPC. On 28-06-15, the accused surrendered before the police and he arrested the accused and forwarded him to jail. On finding prima facie material, he submitted the Charge-Sheet against the accused under Section 354 IPC, read with Section 8 of the POCSO Act. Ext. 4 is the Charge-Sheet and Ext. 4(1) is his signature.

- 18) In his cross-examination, he stated that he made a frantic search for the sole eye-witness Lakhimai, but failed to trace her out. He also could not trace Kalpana Duori. He admitted that the victim stated before him that at the time of incident, her examination was going on. The defence could not elicit any contradiction by the extensive cross-examination of the IO.
- 19) Recapitulating the entire evidence, it is held that there is clinching evidence that the accused is complicit. Except a few minor contradictions, there is no contradiction and the witnesses were not contradicted by their cross-examination. Regarding the time of the incident, all the witnesses have clearly testified that the incident took place when the victim boarded the Winger belonging to the accused person. The time of the incident was also during the time of examination of the victim and it has been categorically stated that the victim commuted in the accused person's Winger to her school and attended her examination. PW-1's father also testified with clarity that the victim was appearing her examination just before the summer vacation. PW-1 has also stated with clarity that the incident took place on 27-06-16 and the examination commenced from 22-06-15. There is also clinching evidence that the accused sexually assaulted the victim.

## 20) Section 7 of the POCSO Act describes sexual assault 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.
- 21) Reverting back to this case, it is thereby held that there is clinching evidence that the accused touched the breast of the victim and thereby made physical contact with the victim without penetration. Regarding the sentence to be

imposed upon the accused, I believe that this is a serious offence and the person with a very evil mind will seek gratifications of this nature. I believe that a sentence of imprisonment for 3 (three) years will suffice and will also act as a deterrent and send out a message to the society at large. This menace of groping female passengers in the public transport has to be eradicated.

22) I have heard the accused on the quantum of sentence. The accused has answered that he is a poor person. All the villagers have vandalized his shop and destroyed his Winger and he is somehow managing to take care of his family for their frugal existence.

## **SENTENCE:**

- 23) The accused Sri Ram Narayan Sah is convicted under Section 8 of the POCSO Act and is sentenced to undergo Rigorous Imprisonment for 3 (three) years and a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo Rigorous Imprisonment for 2 (two) month. The period of detention already undergone by the accused during investigation, and trial is set off with his custodial sentence. The fine realized from the accused will be paid as compensation to the victim.
- 24) I do not believe that this is a fit case to refer to the Legal Services for compensation.
- 25) Furnish free copies of judgment to the accused and to the District Magistrate.

  Judgment is signed, sealed and delivered in the open Court on the 17<sup>th</sup> day of May, 2017.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

## **APPENDIX**

## List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Smti. Santi Lahon;
- 3. PW-3 Sri Palash Lahon;
- 4. PW-4 Smti. Pori Bora Lahon;
- 5. PW-5 Smti. Tulumoni Lahon;
- 6. PW-6 Sri Trilochan Baruah; and
- 7. PW-7 SI Gouranga Dey.

## List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Sketch-Map; and
- 4. Ext. 4 Charge-Sheet.

List of witnesses and Exhibits for defence- None.

Sessions Judge, Dibrugarh

*Transcribed and typed by:*-Bhaskar Jyoti Bora, Steno.