IN THE SPECIAL COURT :: SONITPUR, TEZPUR:: ASSAM

PRESENT:- N. AKHTAR, AJS

Addl. Sessions Judge, Sonitpur::Tezpur.

Special (POCSO) Case No. 76 of 2018.

<u>U/s. 8/12 of</u>

Protection of Children from Sexual Offences Act, 2012.

State of Assam

-Vs-

Sri Hemanta Nath

FOR THE PROSECUTION :- Mr. S.K.Moitra, Special PP.

FOR THE DEFENCE :- Mrs. D.Sinha, Advocate.

EVIDENCE RECORDED ON :- 12.3.19, 5.4.19, 18.7.19, 16.8.19 and

11.09.2019.

ARGUMENTS HEARD ON :- 11.02.2020.

JUDGMENT DELIVERED ON :- 20.02.2020.

JUDGMENT

The case of the prosecution in brief is that on 23.08.2018, while the
daughter of the informant was alone at home, the accused abovenamed entered their house and attempted to commit rape on the
daughter of the informant but she somehow rescued herself from the
clutch of the accused and raised alarm while the accused ran away.
Hence, the FIR was lodged.

- Based on the said FIR, a case being Dhekiajuli PS Case No. 629/2018
 U/s 8/12 of the POCSO Act, 2012 was registered and after completion
 of investigation, the accused was charge-sheeted U/s. 8/12 of the
 POCSO Act, 2012.
- 3. On appearance of the accused person, copies of relevant documents were furnished to him in compliance of the provision of Sec.207 CrPC. Having heard both the sides and considered the materials on record, formal charges were framed against the accused u/s 8/12 of the POCSO Act, 2012 and had been read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial, the prosecution has examined as many as 9 (Nine) witnesses including the medical officer and the investigating officer. The accused was examined U/s 313 CrPC. Defence has also examined one witness as DW1. At the end of the trial, the argument advanced by the learned counsel for both the sides were heard at length.

POINT FOR DETERMINATION

- ➤ Whether the accused person on the alleged day and time of occurrence, committed sexual assault on the victim girl XXX namely, aged 14 years and thereby committed an offence U/s 8 of the POCSO Act, 2012?
- ➤ Whether on the same day and time, the accused also committed sexual harassment on victim girl namely XXX and thereby committed an offence U/s 12 of the POCSO Act, 2012?

DISCUSSIONS, DECISIONS AND REASON FOR DECISION

5. I have heard the arguments advanced by learned counsel for both the sides and also gone through the evidence on record including the law relevant to the issue in hand.

- 6. The learned Special Public Prosecutor had strenuously argued that this is a case where the accused perpetrated the crime with surgical precision. It is submitted that the evidence of the victim girl alone goes to show how the accused had given vent to his lustful desire after fully discovering the fact that she was alone at home and it was the right time for him to satisfy his evil design. It was further argued that the evidence of the victim girl stands fully corroborated by the evidence of other witnesses though no corroboration is in fact, required under the law and the evidence of the victim alone can be acted upon. It is further argued that the case projected by the defence that there was an enmity between the parties and so, the accused is falsely implicated only to wreak an old vengeance, does not hold good in the facts and circumstances of this case. In support of his argument, the learned Special PP has also relied on the following case laws:
 - Shiv Charan Talukdar Vs State of Assam, 2017 (4) GLT 395 and,
 - > Aktar Mohammed Vs State of Assam, 2018 Legal Eagle 262.
- 7. Per contra, the learned defence counsel had argued that this is a case where the accused has been falsely implicated on account of a long standing enmity between the parties. It is also argued that the evidence of the victim girl also suffers from serious discrepancies and so, cannot be acted upon for basing conviction of the accused. her evidence is highly tutored and does not inspire confidence of the court. It is also argued that the defence has set up its case through DW1 and the evidence of DW1 clearly goes to show that owing to the enmity alone, this case has been falsely slapped against the accused. It is therefore, argued that the case of the prosecution fails and the accused is entitled to acquittal. There are some other aspects of the argument of the

learned defence counsel which would be dealt with at appropriate places as the discussion progresses.

- 8. I have duly considered the arguments in the light of the evidence adduced. The alleged victim girl namely XXX has been examined as PW4. Her evidence goes as follows:
- 9. On 23.08.2018, at about 10-30 am, she was alone at home and was reading. Then, the accused came to their house and asked for lime. After taking lime, he went away. After a while, the accused again came. At that time, the victim girl was entering her house with dried cloths. The accused asked her whether she would take guava. She replied in negative. The accused then asked her to bring a knife and some salt. As the victim girl proceeded towards the kitchen to bring knife and salt, the accused grabbed her from behind and made her lie in a supine position in the bed and squeezed her breast. He also gagged her mouth and told her not to disclose about the incident to her parents and else threatened to kill her. She then threw the salt over his body and ran out to the house of Lipika, her neighbor and reported about the incident. At that time, the mother of the victim girl was in Anganbadi Centre and her father was in his shop. Mrs. Pratibha Kalita, the mother of Lipika had informed about the incident to her mother over phone. Her parents came. Police sent her for medical examination and her statement was also recorded U/s 164 CrPC which is Ext-2 and Ext-2 (1) to 2 (3) are her signatures.
- 10. In her cross-examination, the alleged victim girl had deposed that the house of the accused is near their house. There was a guava in the hand of the accused when he came for the second time to the house of PW4. Their house had three rooms. The house is adjacent to the road. When the accused grabbed her from behind, she felt pain. The accused gagged her mouth with one hand and pressed her breast with another

- hand. The accused had fled away as PW4 left her house. She had denied some suggestions put to her by the defence.
- 11. What is important to point out here is that PW4, the alleged victim girl had clearly deposed in her evidence that when she left her house after getting rid of the clutch of the accused, she immediately rushed to the house of one Lipika Kalita who has been examined as PW6. It appears that PW6 is absolutely an independent witness being the neighbor of PW4. PW3 (Smt. Pratibha Kalita) is the mother of PW6 and is also an independent witness. Nothing could be brought on record to show that PW3 and PW6 are interested witnesses. Rather they are witnesses who were immediately informed about the incident by PW4. PW3 had deposed that on the day of occurrence, PW4 came to their house crying and told her that the accused came to her house asking for lime and when she went inside to bring lime, the accused grabbed her from behind and also grabbed her breast. PW3 then informed the matter to the mother of PW4. PW6 had also deposed that PW4 came to their house crying and informed her that while she was alone at home, the accused came to their house and in the pretext of asking for lime, entered their house and grabbed her and made her lie upon a bed and wanted to rape her. It thus clearly appears from the aforesaid evidence of PW3 and PW6 that their evidence has been fully supported by the evidence of PW4. There is nothing in the evidence of PW3 and PW6 rendering their evidence unworthy of credence.
- 12. It is also to be noted that PW1 (Mother of the victim) had deposed that she was informed about the incident by PW6 over phone and then, she came to the house of PW6 along with her husband. When PW1 asked her daughter, she narrated the incident to her. PW2 (Father of the victim) had also deposed that at the time of the incident, he was in his shop. His daughter was alone at home. His wife informed him over phone that something happened to their daughter. PW2 immediately

came to the house of PW6 along with his wife and met their daughter who told them about the incident.

- 13.PW5 (Sri Hiralal Sarmah) is the Gaonburah who had deposed that he was informed by PW2 that on the day of the incident, while his daughter was alone at home, the accused came to their house asking for lime from their daughter and getting a chance, he grabbed her and touched her breast. He also made her lie on bed and wanted to commit rape on her. He had also stated that the victim girl then ran to the house of PW6 and told them about the incident.
- 14. PW7 (Dr. Debajit Hazarika) is the medical officer who examined the victim girl on 23.08.2018 at Dhekiajuli CHC. He found multiple scratch marks over front side of neck of size 1 cm x ½ cm x ½ cm. The injury was simple and caused by blunt weapon. Ext-3 is the medical report and Ext-3 (1) is his signature. In his cross-examination, he had stated that in the report, he only mentioned the size of largest injury. There are some smaller injuries. The injuries sustained by the victim may be caused on attacking by a person or by falling on hard substance. The age of the injury was one day that means it is within 8 hours or 24 hours.
- 15. PW8 (SI Cheniram Gogoi) is the investigating officer. He had deposed that on 23.8.2018, an FIR was received and Dhekiajuli PS Case No. 629/2018 U/s 8/12 of the POCSO Act was registered and he was entrusted with the investigation. He recorded the statement of the victim girl and sent her for medical examination. He also visited the PO and prepared a sketch map of the PO. The victim girl was also sent for getting her statement recorded U/s 164 CrPC. The medical report of the victim was also collected by him and then, he handed over the Case diary.
- 16.PW9 (Sri Tosheswar Baruah) had deposed that on receiving the case diary, he found that the previous investigating officer had already

completed the investigation and so, he submitted chargesheet against the accused U/s 8/12 of the POCSO Act.

17. It is now important to point out here that in a case of sexual assault, the evidence of victim alone is sufficient to bring home the guilt of the accused. Even corroboration is only a rule of prudence and not of law. In the case of **State of Himachal Pradesh Vs Sanjay Kumar @ Sunny**, reported in **(2017) 2 SCC 51**, the **Hon'ble Apex Court** had observed as follows:

"By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does."

18. In the present case, there is no discrepancy in the evidence of the alleged victim girl which renders her evidence unreliable. There is no contradiction in her evidence. Her evidence inspires total confidence. Moreover, in the present case, the evidence of the victim receives sufficient corroboration from the evidence of PW3 and PW6 who are apparently independent witnesses. They immediately got to know about the occurrence and deposed keeping complete tune with the evidence of PW4. This apart, it is to be mentioned here that Ext-2 is the statement of the alleged victim girl recorded U/s 164 CrPC. I have gone through the said statement and it would be clearly seen that PW4 had

clearly stated the entire facts with all minute details in Ext-2 as she had deposed in the court. There has been total corroboration of her evidence in the court with the statement which she made during investigation which has been recorded as Ext-2. This further lends credence to the evidence of PW4 and makes her evidence completely reliable and worthy of acceptance.

- 19. PW1 and PW2 who are the mother and the father of the alleged victim girl had also supported the version of PW4. They have stated that they got to know about the incident from their daughter on reaching the house of PW3 and PW6. Their daughter told them that the accused came to their house asking for lime and when she went inside the house to bring lime, the accused grabbed her from behind and also squeezed her breast and also made her lie on the bed and wanted to do bad act. This is all what is stated by PW4 as well and thus, there is nothing in the evidence of PW1 and PW2 which is inconsistent with the evidence of PW4. The evidence on record are consistent, cogent and inspires confidence.
- 20. It is important to point out here that PW1 clearly deposed in her evidence that at the relevant time of the occurrence, her daughter was 14 years of age. PW2 being the father of the victim had also deposed that the victim girl was aged about 14 years at the time of the incident and she was born in the year 2004. This evidence was not disputed by the defence in any way. This is therefore, clearly established by the evidence adduced in the case that the alleged victim girl was a child within the meaning of Sec.2 (1) (d) of the Protection of Children from Sexual Offences Act, 2012.
- 21. The learned defence counsel had argued that this case has been falsely slapped on the accused on account of a long standing enmity between the parties. In order to prove the facts centering round the said enmity, the defence has examined DW1 (Smt. Mamoni Devi). She had deposed

in her evidence that the accused is her brother. She knew the informant, the victim girl and her father. She had further deposed that the father of the victim girl, wanted to marry DW1 about 20 years back but her family refused to give her in marriage with the father of the victim girl as DW1 was just below 18 years of age at that time. After about 8 years, the brother of PW2 had taken away the sister of DW1 and married her. The father of DW1 went to the house of PW2 to bring back his daughter but she was not allowed to come back to her parental home. Since then, there was no visiting terms with the family of PW2 and PW2 threatened that he would take revenge upon the family of DW1. It is therefore, stated that this false case is now slapped on the brother of DW1 just to wreak the old vengeance.

- 22. I have carefully considered the aforesaid evidence of DW1 but regret my inability to agree to the said story put forward by the defence. It is highly improbable that PW2 being a father, would file a false case jeopardizing the chastity of his grown daughter only because a bitterness developed between the two families some 20 years back. Nobody would opt to put the character of his own daughter at stake by brining a false case even if he has an axe to grind against the family of the accused. It is therefore, highly improbable that such a weird course of action would be adopted by a father as claimed by the defence. The defence story of false implication is therefore, liable to be rejected lock, stock and barrel in the face of the clinching and overwhelming evidence led by the prosecution.
- 23. Now, Section 7 of the POCSO Act, provides that whoever, with sexual intent touches the vagina, penis, anus or breast of a child, or makes the child touch the vagina, penis, anus, or breast of such person or any other persons, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

- 24. So far as the evidence of the victim girl is concerned, it is already seen that her evidence is consistent and worthy of credence. There is nothing in her evidence to reject the same. Since the victim is found to be believable and the remaining evidence also inspires confidence, the onus, in view of Sec. 29 of the POCSO Act, would shift on the accused to establish by cogent evidence as to why the prosecution evidence with respect to the charge against him should not be relied upon. But the defence had neither elicited anything adverse by way of cross-examination nor could project a believable defence story to negate the prosecution case. Thus, the defence has totally failed to discharge the onus placed on it.
- 25. In view of the definition provided for sexual assault in Section 7 of the POCSO Act, the act of accused in grabbing the victim from behind and making her lie down in supine position on the bed and squeezing her breasts, falls within the ambit of sexual assault and the sexual intent is explicitly gathered from the circumstances.
- 26. In the result and for the reasons and discussions made herein above, I have no hesitation in my mind in holding that the prosecution has succeeded in proving the case against accused person abovenamed. He is hence, found guilty of the offence U/s 8 of POCSO Act, 2012 and convicted accordingly. There is however, nothing in the evidence to show commission of any offence punishable U/s 12 of the Act and as such, the accused is not found guilty of any offence U/s 12 of the Act and acquitted of the same.
- 27.I have reconsidered the facts and circumstances of this case to see as to whether the benefit of Sec. 360 of the CrPC or the provisions of Probation of Offenders Act, 1958 can be extended to the accused person. This is a case where the accused taking advantage of the loneliness of a child of 14 years at home, sexually assaulted her and perhaps, he would have gone further but for the good fortune, an

aggravated assault on the victim could be averted. This act in itself is, highly reprehensible. The accused is a man of matured understanding to perceive the implication of his misdeed. He does not deserve any leniency. Hence, I am not inclined to extend the benefit of Sec. 360 of the CrPC or the provisions of Probation of Offenders Act, 1958 to the accused person.

28. HEARING ON QUESTION OF SENTENCE:

Sec. 235 (2) of the CrPC is a mandatory provision of law. The court is required to hear the accused on the question of sentence. I have accordingly heard the accused. He had stated that he is married having wife and two children. He is stated to be the only bread-winner of the family and so, he prayed for leniency in the matter of imposition of sentence.

- 29. Having so heard and on conviction as aforesaid, the accused is sentenced to suffer RI for 4 (Four) years and to pay a fine of Rs. 5000/- (Five thousand) and in default of payment of fine, to suffer further RI for 6 (Six) months u/s 8 of POCSO Act, 2012.
- 30. The period already undergone by the accused shall be set off.

31. **COMPENSATION TO VICTIM**:

I have considered the provision of Sec. 33 (8) of POCSO Act, 2012 and also Rule 7 of POCSO Rules, 2012. Having considered the facts and broad circumstances of this case under which the offence was committed and all other relevant aspects of this case including the age of the victim, her social background as perceivable from the evidence and severity of the mental trauma presumably suffered by the victim, I am of the considered view that an order as to compensation deserves to be *suo moto*, passed in favour of the victim girl. In this regard, I have also duly considered the directions rendered by the **Hon'ble**

Apex Court in the case of Nipun Saxena and Another Vs Union of India and Others, WP(C) No. 565 of 2012 dated. 05.09.2018.

32.It is therefore, directed that a compensation which is quantified at Rs. 75,000/- (Rupees Seventy Five Thousand) shall be paid to the victim girl by the District Legal Services Authority, Tezpur after complying with the norms and procedures prescribed therefor. Let a copy of this judgment be also sent to the District Legal Services Authority, Tezpur, for doing the needful as directed above.

33. Let a free copy of this judgment be forthwith furnished to the accused person.

34. Forward a copy of this judgment to the District Magistrate in compliance of Sec. 365 CrPC.

Given under my hand and seal of this court on the 20th day of February/2020.

Typed and Corrected by me:

Addl. Sessions Judge, Sonitpur:: Tezpur.

APPENDIX

PROSECUTION WITNESSES:

PW1 (Smt. XXX)

PW2 (Sri XXX)

PW3 (Smt. Pratibha Kalita)

PW4 (Miss XXX)

PW5 (Sri Harilal Sharma)

PW6 (Smt. Lipika Kalita)

PW7 (Dr. Debajit Hazarika)

PW8 (Sri Cheniram Gogoi)

PW9 (Sri Tosheswar Baruah)

PROSECUTION EXHIBITS:

Ext-1: FIR.

Ext-2: Statement U/s 164 CrPC of the Victim girl.

Ext-3: Medical Report.

Ext-4: Chargesheet.

DEFENCE WITNESSES:

DW1 (Smt. Mamoni Devi)

DEFENCE EXHIBITS:

NIL.

Addl. Sessions Judge, Sonitpur:: Tezpur.