## IN THE COURT OF THE SPECIAL JUDGE, NAGAON. ASSAM

PRESENT: Smti. H. D. Bhuyan,

Special Judge,

Nagaon.

## SPECIAL (T-2) CASE NO. 01(N) OF 2013

Under section 8 of POCSO Act G.R. Case No. 1688 of 2013.

State of Assam ...... Complainant

-Versus -

Sahadev Das ...... Accused Person

## **ADVOCATES WHO APPEARED IN THIS CASE**

For the Complainant :Smti. Deepa Saikia,

Additional Public Prosecutor.

For the accused : Sri Rafique Ullah,

Advocate.

Date of evidence :29-03-14,17-07-14,

05-01-15

Date of Argument : 09-03-2015.

Date of Judgment : 18 - 03-2015

## J U D G M E N T

- 1. The prosecution case in nutshell is that on last 05-10-2013 the informant, namely, Sri Nibash Das, resident of village Baliram gaon, under Jamunamukh Police Station had lodged FIR before the O/C of Jamunamukh P.S. to the effect that on last 04-10-2013 Friday at 10:30 a.m., accused Sahadev Das by inducing his minor daughter, namely, victim-X took her to his house and taking the advantage of absence of other family members, committed sexual assault on her. He further added in the F.I.R that at that time he was in his shop at Baliram gaon Tiniali while his wife was busy in the house with her household works and just then, his daughter came home crying from the house of accused and informed about the incident of sexual assault to his wife, i.e. the mother of the victims . Hence, the F.I.R.
- 2. On receiving the F.I.R., the police of Jamunamukh P.S. registered the Jamunamukh P.S. Case No. 51/13 U/s. 8 of the Protection of Children from Sexual Offences Act, 2012 against the accused person and started usual investigation thereon. Upon completion of the investigation police laid charge sheet in the case U/s. 8 of the Protection of Children from Sexual Offences Act, 2012 . Thereafter, the case was received in this Court for trial.
- 3. On being produced in this Court, the accused was furnished with necessary copies as required U/s. 207 of Cr.P.C by my learned predecessor who also framed a formal charge U/s. 8 of the Protection of Children from Sexual Offences Act, 2012 against accused Sahadev Das, after perusal of police papers U/s. 173 of Cr.P.C. and also after hearing the learned counsels for both sides. The charge was also read over and explained to the accused person and he pleaded not guilty and claimed to be tried.
- **4.** During trial of the case the prosecution side examined altogether 7 PWs while the defence side did not adduce any evidence. The statement of accused u/s 313 was also recorded.
- **5.** After hearing arguments for both sides, I hereby proceed to deliver my judgment in this case.

# 6. Now, the point for decision before me are as follows:-

i) Whether on last 04-01-2013 at about 10:30 a.m. at village Baliram gaon under Jamunamukh P.S., the accused person committed sexual assault on the victim girl 'X' by detaining her in his house with intent to commit sexual act with her and thereby committed an offence punishable U/s. 8 of the POSCO Act?

# 7. My findings and reasons thereof are as follows :-

During trial of the case the prosecution side examined altogether 7 PWs while the defence side did not adduce any evidence. Now, let me consider what are the evidence adduced by these PWs.

P.W. 1 is the victim girl namely 'X'. She was examined without oath. She deposed before this court that one month ago from the date of her deposition, one day at about 9 A.M. the accused kissed her at his house and as such, she came back to her house and informed the matter to her mother. She further deposed that she was brought before a Magistrate who recorded her statement wherein she put her signatures vide Ext.1(1), Ext.1(2), 1(3) and 1(4). In her cross-examination she stated that accused is her next door neighbor and she generally used to go to the house of accused for watching television along with other children of the locality. This witness further deposed in her cross-examination that she had also made similar statement before Magistrate.

P.W.2, Smti. Sumitra Das is the mother of the victim 'X'. She deposed that she knows accused Sahadev Das and the incident took place on the day of Durga Puja (Mahalaya) in the morning when she was present in her own house. She further deposed that on that day her daughter went to the house of accused to watch television as usual but after sometimes, her daughter returned back home crying and told her that accused kissed her. P.W. 2 further deposed that on enquiry, the accused told that her daughter is a little girl and out of affection he kissed her but in the meantime many people of the locality gathered there and informed the matter to police. Smti Sumitra Das further deposed that

as instructed by the public her husband filed the case. In her cross-examination this witness deposed that she regards the accused as her father-in-law and the kiss given by the accused to her daughter was nothing but a sign of love and affection towards her daughter and out of misunderstanding her husband has filed the instant case.

P.W.3, Sri Nibhash Das is the complainant and father of the victim. He deposed that he lodged the FIR vide Ext.2 with his signature Ext.2(1). This witness further deposed that one day during puja at about 12 mid day when he came home, saw many people gathered in his house and they asked him to lodge the FIR against the accused and hence, he lodged the FIR. P.W.3 Sri Nibash Das also deposed in his cross-examination that contents of the FIR is not known to him as it was written by somebody else and out of the influence of the public he lodged the FIR. This witness further deposed in his cross-examination that now he maintains a good relationship with the accused and does not want to proceed against the accused.

P.W.4 Sri Hinden Das deposed in his evidence that at the time of incident he was at market and on hearing hue and cries he arrived at the place of occurrence and he came to know from Joydev, Indreswar and others that accused did some bad works with the victim. P.W.4 further deposed that he informed the police and police took away the accused.

P.W.5 Sri Rajesh Das deposed in his evidence that before 8/9 months back from the date of his deposition, one day when he was returning from market at around 7.30/8.00 p.m., he heard hue and cry in the house of informant and when went there, saw many people gathering there. He further deposed that he heard that the daughter of Nibhas Das was raped by the accused and later on police came and took away the accused.

P.W.6 Sajjal Das deposed in his evidence that he knows the accused, informant and the victim. P.W.6 further deposed that before 5/6 months back from the date of deposition, when he came home from his work, heard hue and

cries in the house of accused and went there and heard nothing about the incident.

P.W.7- S.I. Sekhauddin Ahmed deposed in his evidence that on last 05-10-13 while he was serving as Sub-Inspector of Police at Jamunamukh P.S., the O/C of P.S ,Sri Someswar Bora received the FIR from informant Nibash Das and after registering the case on the said FIR, vide Jamunamukh P.S. Case No. 51/13 u/s 8 of the POCSO Act, this P.W. was entrusted to investigate the case. This witness also deposed that before filing of the FIR, on a telephonic information, the Jamuamukh P.S. GDE No.57 dated 04-10-13 was recorded and accordingly, he visited the place of occurrence, examined the witnesses, arrested the accused person. His further evidence is that after receiving the FIR on 05-10-13, he recorded the statement of victim and two other witnesses, prepared the sketch map of the place of occurrence vide Ext.3, produced the victim before Magistrate and get her statement recorded by the magistrate and finally submitted charge-sheet against accused Sahadeb Das u/s 8 of the POCSO Act vide Ext.4 and Ext.4(1) is his signature.

8. Thus, after careful analysis of the evidence in record, it appears that the P.W.3 who is the informant and father of the victim stated in his evidence that one day during puja at about 12 mid day when he came home, saw many people gathered in his house and they asked him to lodge the FIR against the accused, hence he lodged the FIR. The P.W.2, Smti. Sumitra Das who is the mother of the victim 'X' deposed that on the day of occurrence, her daughter went to the house of accused to watch television as usual but after sometime her daughter returned back home crying and told her that accused kissed her. Close to the hill of the evidence of the P.W.2, the P.W.1, who is the victim of this case while examining without oath deposed before this court that one month ago from the date of her deposition, one day at about 9 A.M. the accused kissed her at his house and as such, she came back to her house and informed the matter to her mother. The learned Addl. Public Prosecutor during argument submits that upon the facts and circumstances of the case and evidence adduced by the P.Ws., it is clearly established that on the day of occurrence, the accused person committed sexual assault on the victim girl 'X'

in his house with intent to commit sexual act. According to the learned Addl. P.P., this is a clear case to convict the accused person U/s. 8 of the POSCO Act because there are sufficient, cogent and reliable evidence against him to hold guilty for the said offence.

Forcefully resisting the submission of the learned Addl. P.P., the learned counsel for the accused person submitted that there is no iota of evidence at all to see that the accused person has committed the offence U/s. 8 of the POSCO Act. According to him, in the present case, from the analysis of the evidence of P.Ws., the accused person can not be held guilty for the offence U/s. 8 of the POSCO Act as evidence is not consistent with the guilt of accused person. His further submission is that the prosecution story being solely rest on the evidence of P.W.1-the victim and the P.W.2 who is the mother of the victim, no ingredients U/s. 8 of the POSCO Act can be made out from what these witnesses had stated in their evidence before this Court and the P.W.2 herself admitted in her evidence that she regards the accused as her father-in-law and the kiss given by the accused to her daughter was nothing but a sign of love and affection towards her daughter and out of misunderstanding her husband has filed the instant case and such circumstances are sufficient to create a doubt regarding the truth of the alleged occurrence rendering the prosecution story as doubtful and concocted one. According to the learned counsel for the accused person, the prosecution measurably failed to prove the accusation against the accused person beyond all reasonable doubt and therefore, he prays for acquitting the accused person from the offence with which he was charged with.

9. I have given my thoughtful and anxious consideration as to the rival submissions lead by the learned counsels for both side. I also carefully scrutinized the evidence adduced by the PWs. So far oral evidence of PWs concerned, it appears that P.W.1 who is the victim of this case while examining without oath deposed before this court that on the date of occurrence at about 9 A.M. when she went to the house of the accused person, he kissed her on her cheek and as such, she came back to her house and informed the matter to her mother. Now, turning back to the evidence of P.W.2-, Smti. Sumitra Das who is the mother of the victim 'X', it is found that this P.W. adduced evidence that on

the day of occurrence, her daughter went to the house of accused to watch television as usual but after sometimes her daughter returned back home crying and told her that accused kissed her. The P.W. 2 further deposed that on being enquired, accused told her that her daughter is a little girl and out of affection he kissed her but as instructed by the public, her husband filed the case. P.W.2 in her cross-examination further admitted that she regards the accused as her father-in-law and the kiss given by the accused to her daughter was nothing but a sign of love and affection towards her daughter and out of misunderstanding her husband has filed the instant case. The P.W.3, Sri Nibhash Das who is the complainant and father of the victim deposed that one day during puja at about 12 mid day when he came home, saw many people gathered in his house and they asked him to lodge the FIR against the accused, hence, he lodged the F.I.R. In his cross-examination P.W.3 also deposed that contents of the FIR was not known to him as it was written by somebody else and out of the influence of the public, he lodged the FIR against the accused person. Other P.Ws. examined by the prosecution side, namely, P.W.4, P.W.5 and P.W.6 are not the witnesses of occurrence and their evidence are only hearsay. Thus, from analysis of the evidence of the material witnesses, it is found that there is nothing in evidence that on the day of occurrence, the accused person committed sexual assault on the victim girl 'X' in his house with intent to commit sexual Act with her and probability of false implication can not be ruled out in this case.

Hence, after considering the above factual position as revealed from the analysis of the evidence of the P.Ws. and the materials before me, my considered view is that the evidence of P.W.1 as well P.W.2, P.W.3 and other witnesses are not sufficient to inspire confidence of this court to warrant conviction of the accused person for the offence with which he was charged with.

Thus, after considering the cumulative value of the evidence, I find that there is no such evidence adduced by the prosecution in the case, which would help this Court to held confidently that accused person, on the date of occurrence committed sexual assault on the victim girl 'X' in his house with intent to commit sexual Act with her and the evidence lead by the prosecution do not inspire me to hold that such evidence unerringly lead to pointing towards the

guilt of the accused person. In a criminal case, conclusive proof having been required before giving a finding as to the accused being guilty of offence with which he is charged with, it is seen that in the instant case, the prosecution measurably fails to prove conclusively the guilt of accused person committing sexual assault on the victim girl 'X' in his house with intent to commit sexual Act with her beyond all reasonable doubt. The inevitable conclusion, therefore, is that the accused is entitled to the benefit of doubt. Thus, it is seen that the prosecution miserably failed to bring home the charge U/s. 8 of the POSCO Act against the accused person beyond all reasonable doubt.

## O R D E R

10. In the result, the accused Sahadev Das not found guilty for committing offence U/s. 8 of the POSCO Act. Hence, he is acquitted of the offence and set at liberty.

The accused person being on bail, his bail bond shall extend to another six months from today.

The judgment is pronounced in an open court and enclosed with the case record.

Given under my hand and seal of this court, I have signed and delivered this judgment on this 18<sup>th</sup> day of March, 2015 at Nagaon.

(Mrs.H.D. Bhuyan.)
Special Judge,
Nagaon.

Dictated and corrected by me.

(Mrs.H.D.Bhuyan) Special Judge, Nagaon.

Typed by me

(N.Rajkhowa) Steno.

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## ANNEXURE

## **Prosecution Witnesses:**

- 1. P.W.1 Victim 'X'
- 2. P.W.2 Sumitra Das
- 3. P.W.3- Nibhas Das
- 4. P.W.4 Hinden Das
- 5. P.W.5 Rajesh Das
- 6. P.W.6 Sajjal Das
- 7. P.W.7 S.I. Sekhauddin Ahmed

## **Defence witnesses**

Nil

#### **Prosecution Exibits**

- 1. Ext.1 Statement of victim
- 2. Ext.1(1), 1(2), 1(3), & 1(4) Signatures of victim
- 3. Ext.2 FIR
- 4. Ext.2(1) Signature

## **Defence Exhibits.**

- 1. Ext.A Petition filed by informant
- 2. Ext.A(1) Signature of informant

(Mrs. H.D.Bhuyan)
Sessions Judge,
Nagaon.