

**IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI.**

**Special POCSO (T-1) Case No. 14/2017**

(Under Section 8 of the POCSO Act)

**State**

**-Versus-**

Jiab Uddin Laskar .....Accused.

**PRESENT :** **Shri D. Bhattacharjee, AJS,**  
**Special Judge, Hailakandi.**

**Particulars and Appearances :-**

For the State	: - Shri U.K. Das, Ld. Public Prosecutor.
For the Accused	: - Shri J.U. Laskar, Ld. Advocate.
Dates of recording prosecution evidence	: - 21.12.2017, 04.01.2018 & 18.01.2018.
Dates of recording defence evidence	: - 26.02.2018.
Date of recording statement U/S 313 of Cr.P.C.	: - 24.01.2018.
Date of Argument	: - 23.03.2018.
Date of Judgment	: - 31.03.2018.

**JUDGMENT**

1. Since in the present case the sexual assault of minor girl is in issue, for the welfare of the child, her identity is not disclosed and as such, hereinafter she is referred to as "victim".
2. The prosecution case as evolved from the FIR lodged on 01.10.2017 by one Sri Sudip Deb with the Officer-in-charge, Katlicherra Police Station is that on 30.09.2017 on the night of Vijaya Dashmi, at about 11 Contd.....P/2.

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P.M. he along with his wife, child, family members and others went to immersion ghat in a vehicle for immersion of the idol of deity Devi Durga of their house. In the immersion ghat, keeping his six years old daughter viz. the victim in the vehicle under the custody of accused, they went for immersion of the idol of Devi Durga. But, on getting the victim alone, the accused in order to effectuate his evil intention started pulling her wearing cloths, touched her entire body and attempted to commit inhuman acts, then the victim out of fear raised hue and cry and on hearing the same, nearby people came and rescued her from the clutch of accused. As a result, the victim has suffered tremendous mental agony.

**3.** On receipt of the ejahar, Katlicherra P.S. Case No. 149/2017 was registered under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short hereinafter referred to as 'POCSO Act') and S.I. of Police, Sri Kalyan Bora was entrusted to investigate the case. During investigation, police visited the place of occurrence, prepared rough sketch map thereof, recorded the statements of witnesses, got the victim medically examined, got her statement recorded under Section 164 of Cr.P.C., arrested the accused person Jiab Uddin Laskar and forwarded him to the court and after completion of investigation, having been found prima facie case submitted charge sheet against the accused Jiab Uddin Laskar under Section 8 of POCSO Act.

**4.** As per statutory provisions, the copies of relevant materials furnished to the accused person. After hearing the Ld. Public Prosecutor and the Ld. Defence counsel and after perusal of materials available on record, having been found sufficient grounds for presuming that the accused person Jiab Uddin Lasker has committed the offence, formal charge was framed against him under Section 8 of POCSO Act. The charge so framed was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

**5.** The prosecution in order to prove its case examined  
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altogether 6 PWs. including M.O. and I.O. The defence plea is of total denial. The accused person was examined under Section 313 of Cr.P.C. wherein he denied all such incriminating materials brought in evidence against him by the prosecution witnesses. The defence side also examined two witnesses as DWs.- 1 & 2.

- 6.** Heard argument of the Ld. Public Prosecutor and the Ld. Defence counsel.

**POINT FOR DETERMINATION**

Whether the accused person on 30.09.2017 at 11 P.M. under Katlicherra Police Station committed sexual assault on the victim as six years old minor girl and thereby committed an offence punishable under Section 8 of POCSO Act, 2012?

**DISCUSSION, DECISION AND REASONS THEREOF**

- 7.** At the very outset, it is apposite to go through the evidence available on record. The relevant evidence adduced by the prosecution witnesses are reproduced below:

The PW-1, victim, a six years old girl has deposed that in the last Durga Puja held in their house, on the night of Vijaya Dashmi, they took the idol of Deity Durga in a truck for immersion. At that time, her parents and cousin were also in the said truck. After their arrival at immersion ghat, her parents and others got down from the truck and went for immersion but she was in the truck. At that time, accused Jiab Uddin Lasker caught her, inserted his hand inside her pant and touched her body. She caught his hair and tried to push him. Thereafter, her parents came and then she disclosed the entire incident to them. Police took her to the hospital and also to the court where she narrated the entire incident to a Magistrate, Ext.-1 is the said statement and Ext.-1(1) and 1(2) are her signatures.

In cross examination, she has stated that it was not  
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dark at the relevant time. Keeping her alone in the truck, all went for immersion and after sometime her parents came, she narrated the entire incident to them.

The defence could not bring out any omission or inconsistency in the evidence of the victim.

**8.** The PW-2, Smt. Anamika Deb, mother of the victim has deposed that in the year 2017, Durga Puja held in their house and on the night of Vijaya Dashami, all the family members including the victim went to the immersion ghat in a truck for immersion of the idol of Deity Durga and in the immersion ghat, they all got down from the truck but since the victim was a small child, for the purpose of safety, they kept her in the truck. It is further stated that at that time, the driver of the truck was there. While they all were busy in the process of immersion, her elder brother-in-law informed them that the victim was crying in the truck, then her husband and all of them rushed to the truck and found the accused Jiab Uddin sitting in the cabin of the truck near her daughter and her daughter was crying. At that time, the driver of the truck was not there. The accused was handyman of the truck. On being asked by them, the victim told that the accused touched her body and inserted his hand inside her pant. In the meantime, police came. Police took her daughter to the hospital.

In cross examination, she has stated that she did not see the incident but her daughter narrated the entire incident to her. She has further stated that though it was dark night, there was electric light in the street due to immersion.

**9.** The PW-3, Dr. Ajgar Ali Ahmed has deposed that on 30.09.2017 at about 11:50 P.M. at Katlicherra Block P.H.C., on police requisition, he examined the victim a six years old girl and found no external injury on the person of the victim. Ext.-2 is the medical report and Ext.-2(1) is his signature.

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In cross examination, he has stated that from the victim and her parents, he came to know that the victim was molested by the accused who had touched her different private parts and accordingly, he noted down the history in his report.

**10.** The PW-4, Sri Sudip Deb, father of the victim has deposed that he is the informant of this case. In the last year, there was Durga Puja in their house. On 30.09.2017, on the night of Vijaya Dashami, they took out procession of Deity Durga in a truck bearing Registration No. AS-24-C-5472 for the purpose of immersion. In immersion ghat, on the bank of river Dhaleswari, many people gathered and considering the safety of his child viz. the victim, they kept her inside the truck and all of them went to the river for immersion. At that time, accused was standing near the truck. He has further stated that the accused was all along in the truck since the very inception of the procession as the accused was handyman of the truck. In the immersion ghat, his cousin Chandan Das Gupta reported him that his daughter was crying in the truck, then he ran to the truck and found the accused sitting in the truck near his daughter and his daughter was crying. He has further reported that on being asked, his daughter reported him that the accused was doing bad act with her. On further query, the victim told him that the accused touched her body and put his hand inside her pant. In the meantime, many people gathered and since the police were on duty in the immersion ghat, they also arrived and took the accused in their custody. On the same night, he lodged the ejahar. Police took his daughter to the hospital and also got her statement recorded by a Magistrate. The Ext.-3 is the said ejahar lodged by him and Ext.-3(1) is his signature.

In cross examination, he has deposed that they took idols in three numbers of trucks. The distance between the place where the vehicle was parked and the place of immersion is around 30 meters. Around one thousand people gathered there in the immersion ghat. He has further stated that while he kept his daughter in the vehicle, the driver and handyman both were present there.

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**11.** The PW-5, Sri Chandan Das Gupta has deposed that on the night of Vijaya Dashami of last Durga Puja, they all came in truck with Deity Durga to immersion ghat. At about 11 P.M. when all the members went to immersion ghat and when he was about to proceed towards immersion ghat, he heard the victim was crying inside the truck and the accused was sitting near her. On being asked about the reason of her cry, she stated that the accused was doing wrong with her and she asked her to call her Pappa, then he ran towards immersion ghat and informed the father of the victim about the incident. In the meantime, her father also came. In his presence, the victim disclosed her father that the accused touched her body and put his hand inside her pant. Thereafter, police came and took the accused in custody.

In cross examination, he has stated that there were three trucks and the other two trucks were kept a bit far from the truck in which the incident occurred. He has further stated that before the immersion of idol, the incident occurred.

**12.** The PW-6, Sri Kalyan Bora has deposed that on 01.10.2017 at about 11:30 A.M. the Officer-in-charge, Sri Nitai Chan Singh had received the Ext.-3, ejahar lodged by one Sudip Deb and accordingly, he registered the case vide Katlicherra P.S. Case No. 149/2017 under Section 8 of POCSO Act and he was entrusted by the Officer-in-charge to investigate the case. On 30.09.2017 the victim was medically examined. He has further stated that the accused was handyman of the vehicle. On completion of investigation, he submitted charge sheet against the accused Jibab Uddin Laskar under Section 8 of the POCSO Act.

In cross examination, he has stated that the date of occurrence was on 30.09.2017 at 11 P.M.

**13.** The DW-1, Sri Ranjan Malakar has deposed that on the last Durga Puja in the night of Dashami he went to the immersion ghat with idol of Deity Durga of Katlicherra Bazar Club. Many people gathered there to watch the immersion. After the immersion was over, at about 11 P.M. he left

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the immersion ghat. There he saw the accused Jiab Uddin who is a daily wage earner. He has further stated that he cannot say if the accused was working as handyman. He did not see any truck in the immersion ghat but he saw only people there.

In cross examination by prosecution, he has stated that he has appeared in the court on request of accused person.

**14.** The DW-2, Smt. Chandana Malakar has deposed that the accused is a daily wage earner and on the day of Dashami of last Durga Puja, the accused went with them to the immersion ghat. At around 12 A.M. the immersion completed. During immersion, they noticed that there was tussle taking place and then they left the place. After reaching home, they came to know that the tussle was with the accused person.

In cross examination by prosecution, she has stated that during entire immersion programme, once she noticed the accused. She did not notice the DW-1 in the immersion ghat.

**15.** In the backdrop of above evidence, from the Ext.-3, FIR, it is revealed that there was Durga Puja in the house of informant in the year 2017 and on 30.09.2017, on the night of Vijaya Dashami the informant and his family members along with his six year minor child viz. the victim, went to the immersion ghat in a truck for immersion of the idol of Deity Durga where keeping the victim in the truck under the care and custody of accused, they went to the immersion ghat for immersion of the idol and at that time, the accused touched the body of the victim and also inserted his hand inside her pant.

**16.** The victim PW-1 who is a six years old girl in her evidence has very categorically stated that after arrival at immersion ghat, her parents and others got down from the truck and went for immersion of the Deity Durga and she was in the truck, at that time, accused Jiab Uddin caught her, inserted his hand inside her pant and touched her body. The above

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evidence of the victim could not be demolished by the defence in cross examination. The victim's evidence was recorded after being satisfied about her maturity of understanding. The defence even could not bring out any contradiction in the testimony of the victim. The above evidence of the victim is very much corroborative to her statement recorded under section u/s 164 of Cr. P. C marked as Ext. 1.

**17.** The victim has further stated that immediately her parents came and she had narrated the entire incident to them. The evidence of PW-5 is that while he was going to the immersion ghat, he heard cry of the victim and at that time, the accused was sitting near her. It is also found that he asked the victim as to why she was crying then the victim replied that the accused was doing something wrong with her and she told him to call her Pappa. Then, the PW-5 ran to the immersion ghat and informed the father of the victim about the same. The evidence of PW-5 also remained unshaken as the defence could not bring out any contradiction therein. The PW-4, the father of the victim has deposed that while he was in the immersion ghat, in the river, the PW-5 ran to him and reported that his daughter was crying in the truck. Therefore, the evidence of PW-5 is found very much consistent and receives support from the evidence of PW-4 that he ran to the immersion ghat and reported about the incident to the PW-4. The clear evidence of PW-5 is that on hearing cry of victim in the truck, he went there and saw the accused sitting near her and then the victim reported him about the wrong done by the accused to her and she also told the PW-5 to call her Pappa and accordingly, the PW-5 informed her Pappa.

**18.** The PW-5 has stated that the victim has narrated the entire incident to her father in his presence and she has also narrated that the accused touched her body and put his hand inside her pant. The PW-2, mother and PW-4, father of the victim have very categorically stated that considering the safety of their child, keeping her inside the truck, they all went to river for immersion and at that time, the accused was present there who was handyman of the truck and at that time, the PW-5 came and reported them that their

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daughter was crying in the truck and then they ran to the truck and found the accused sitting in the cabin of the truck near their daughter. They have further stated that the victim reported them that the accused touched her body and inserted his hand inside her pant. The evidence of PWs.-2 and 4 also corroborated each other and very much consistent with the evidence of victim and PW-5. The victim has stated that the accused person touched her body and inserted his hand inside her pant. The PW-5 has stated that he saw the accused sitting near the victim and the victim was crying. The PWs- 2 & 4 have stated that immediate after getting the information, they came to the truck and found the accused sitting near the victim.

**19.** The victim has stated that she has narrated the entire incident to her parents. The parents of the victim also have testified consistently that the victim reported them that the accused touched her body and put his hand inside her pant.

**20.** The honourable Supreme Court in ***Suryanarayana v. State of Karnataka, (2001) 9 SCC 129*** at page 133 has held as follows:

**"5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and"**

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*prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not."*

In the instant case the incident occurred on 30.09.2017 and the victim adduced evidence in the court on 21.12.2017 i.e. within three months of the incident while her memory was very fresh. The victim has faced cross examination but the defence side could not bring out any contradiction and inconsistency in her testimony. Moreover, her testimony has received corroboration from the evidence of PW 5 that he saw the accused sitting near the victim and she was crying and also received corroboration from the evidence PWs 2 and 4 her parents that on their arrival they found the accused sitting in the cabin near their daughter. Moreover, on the relevant night itself the victim was medially examined and the accused was apprehended and arrested by police.

**21.** The victim is a six years old child and a student of Class-I at Saint Captano School. Her father PW-4, is an Assistant Inspector of Excise, Silchar. The accused is a resident under P.S. Katlicherra, Hailakandi and is a daily wage earner and on the relevant night of occurrence he was handyman of the vehicle by which the idol was carried up to the immersion ghat. Nothing has been brought on record to show any enmity between the informant side and the accused. Under the facts and circumstances, there is no reason to disbelieve the evidence of victim, her parents and PW-5.

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**22.** The Ld. Defence counsel during argument has submitted that the accused was not present there at the relevant time and he has been implicated in the instant case falsely. In support of his contention, he has relied on the evidence of DWs.- 1 & 2.

**23.** The above evidence of DWs.- 1 & 2 is not at all confidence inspiring as both them appeared to depose on the request of accused person and their evidence could not in any way negate the case of prosecution. However, their evidence has confirmed the presence of accused in the immersion ghat. The evidence of prosecution witnesses is very much consistent to the fact that at the relevant time, due to immersion, police personnel were on duty and on seeing the occurrence they came and apprehended the accused.

**24.** From the above discussion of evidence on record, it is surfaced that the accused person had touched the body of the victim a six years old minor girl and also inserted his hand inside her pant.

**25.** The accused person has been charged u/s 8 of the POCSO Act. 2012 which reads as follows:

**"8. Punishment for sexual assault.- whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine."**

Section 7 of the POCSO Act, defines 'sexual assault'

**"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."**

Reverting back to the case at hand, it is appeared that the accused person with

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sexual intent had touched the body of the victim and put his hand inside her pant. Therefore, the case comes within the four corners of Section 8 of the POCSO Act.

**26.** In view of above discussion, it can be safely held that the prosecution is able to prove its case against the accused person beyond all reasonable doubt.

**27.** *Accordingly, the accused person Jiaib Uddin Laskar is convicted u/s 8 of the Protection of Children from Sexual Offences Act, 2012.*

**28.** Heard the convict on the point of sentence and his statement was recorded in a separate sheet appended to the record. He has stated that he has got his family and he is the sole earning member and his detention in the jail would cause great hardship to them. He has pleaded for leniency.

**29.** Considering gravity of the crime and its impacts on the society as well as on the victim who has just started introducing with the world, according to me, the following punishment would meet the ends of justice.

*The convict Jiaib Uddin Laskar is sentenced to Rigorous Imprisonment for 4 (four) years and to pay fine of Rs. 3,000/-, in default of payment of fine, further Rigorous Imprisonment for 2 (two) months.*

Fine if realised shall be paid to the victim.

**30.** The period of detention already underwent by the convict during investigation and trial shall be set off from the sentence.

**31.** The bail bond of the convict stands discharged.

**32.** Furnish a free copy of the judgment to the convict immediately.

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- 33.** Send a copy of this judgment to the District Magistrate,  
Hailakandi.
- 34.** The Special POCSO case is disposed of accordingly.
- 35.** Given under my hand and seal of this Court on this the  
31<sup>st</sup> day of March, 2018 at Hailakandi.

  
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**Special Judge,  
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Dictated and corrected by me:

  
**Special Judge, Hailakandi.  
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**Appendix :-**

**Oral Evidences :-**

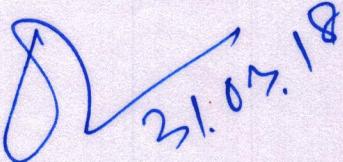
PW-1, Sunakshi Deb.  
PW-2, Smt. Anamika Deb.  
PW-3, Dr. Ajgar Ali Ahmed.  
PW-4, Sri Sudip Deb.  
PW-5, Sri Chandan Dasgupta  
PW-6, Sri Kalyan Bora.

**Documentary Evidences :-**

Ext.-1, Statement of victim.  
Ext.-2, Medical report.  
Ext.-3, Ejahar.  
Ext.-4, FIR Form.  
Ext.-5, Sketch map of the place of occurrence.  
Ext.-6, Charge sheet.

**Defence Evidences.**

DW-1, Ranjan Malakar.  
DW-2, Smt. Chandana Malakar.

  
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