IN THE COURT OF THE SESSIONS JUDGE, CACHAR AT SILCHAR.

Present :- Sri K. Choudhury, Special Judge, Cachar, Silchar.

Spl. (POCSO) Case No: 13/2016.

U/S. Sec.8 of POCSO Act.

State of Assam......Complainant.

Nizamuddin Mazumdar.

S/O Razomul Ali Mazumdar.

Vill. Masimpur.Part-III P.S. Borkhola District Cachar. Silchar. ::::::::

Accused person.

Charge framed on: - 23-08-16.

Date of recording evidence: - 06-09-16, 16-09-16, 28-09-16,06-10-16

Statement of the accused person recorded on: 06-10.16.

Argument heard on :- 01-12-2016.

Judgment delivered on :- 07-12-2016.

ADVOCATE APPEARED

For the prosecution :- Mr. S. Dutta. P. P.

For the defence :- Mr. Y. Ali Laskar. Learned advocate.

<u>JUDGMENT</u>

1. Prosecution case in brief is that on 25-06-16 at about 3.30 p.m. while the twelve years aged daughter of the complainant, herein below mentioned as the victim, was going to the house of her private

tutor namely, Aditya Koiri following END bandh, on the way in a lonely place the accused was found coming with buffalo. The accused, finding the victim as alone, with his bed intention started behaving with her in a slang manner. Accused also pressed her breast and also used force on her. On her raising cry the accused released her. The victim then returned home and informed the matter to her mother, i.e. the complainant, who then went to the P.O. along with the victim and on query managed to identify the accused. Accordingly FIR was lodged on 26-06-16. The same was registered as Borkhola P.S. case No. 207/2016 U/S 4 of Protection of Children from Sexual Offence Act 2012 (POCSO Act).

- 2. During investigation, victim gave statement before the Magistrate U/S 164 of Cr.P.C. She was also medically examined. On completion of investigation I.O. submitted charge sheet against the accused U/S Sec. 8 of POCSO Act 2012.
- 3. On production of the accused, copies of all necessary police papers were furnished to him. After hearing of both sides and perusal of materials on the record, this Court framed formal charge against the accused under Sec.8 of the POCSO Act. The charge was read over and explained to the accused to which he pleaded not guilty. Hence, trial began.
- 4. To prove the case, prosecution examined as many as six witnesses (P.Ws) including the Doctor, the I.O. and the victim. Defence plea is that at the material time three buffalos of the accused were climbing on the END bandh and at that time one auto was coming with horn. Hearing the horn buffalo rushed forward and seeing the same the victim being afraid started to run and fell down in front of the shop of

one Abbas, and the victim abused the accused as a buffalo(Boyar), and subsequently the accused had been falsely implicated. The accused in his examination U/S 313 of Cr.P.C. took the same plea of false implication. In support of his plea he examined one Abbas Uddin as D.W.1.

- 5. Now, under the facts and circumstances of the case, whether the accused committed any sexual assault on the victim minor daughter of the complainant.
- 6. To decide the above appoint I have heard argument from both sides and perused the entire evidence on the record. My findings and decisions with reasons thereof are given below.

Let the evidence on the record be discussed below:-

7. PW. 1 –Purobi Rani Das mother of the victim. She deposed that on the date of occurrence at about 3-10/3-15 P.M. her victim daughter student of class-VI went out to attend her private tutor namely Aditya Koiri and returned just after 4.00 p.m. as weeping. Seeing the victim daughter she (P.W.1) rushed out from the house and made query. On such query the victim replied that someone committed 'Saitani' with her. The victim further reported that the culprit initially proceeded with her talking nuisance and after sometime taking advantage of lonely place the culprit touched her breast and vagina. On query about the name of culprit the victim reported the name of culprit as Nizam. P.W.1 further testified that she then along with the victim went out in search of said Nizam, and taking the help of others they managed to reach the house of said Nizam, who was then identified by the victim as the culprit and accused of this case. After that she returned with her victim daughter and lodged ejahar the Ext-1. During investigation police seized one birth certificate of the victim vide Ext-2. M.Ext-1 is the birth certificate showing the date of birth of the victim as

on 29-11-2004.

In the cross-examination she further gave the topography of the surroundings of the P.O. According to her on the western side of the END there are few houses and grazing ground around ten feet below the END band. She denied the defence plea of running buffalo etc. as stated earlier. She denied the suggestion that the alleged incident took place in a lonely place and the accused did not touch the body of the victim and at the instance of some enemies of the accused lodged the ejahar.

- 8. P.W.2, the victim, deposed that about two months prior to her evidence one day at about 3-05 p.m. she was proceeding on foot to attend her private tuition. On the way, the accused started to follow her. Initially he started to talk with her asking her name, the name of her school and then started further gossiping stating that he used to take milk of buffalo, cow and also used to drink milk of female person. The accused was along with his buffalo. Realizing his ill intention she started to walk with speed. After that the accused touched her shoulder and pressed her breast. The accused touched her hand and touched her abdomen. However, she managed to get rid of him. While leaving him away told him that she would report the matter to her parents. The accused then told her to disclose the matter to her parents expressing that he on her will did the same. The accused then left away.
- 9. P.W.2 further deposed that on the way back to her house she found one small boy from whom she came to know the name of the accused as Nizam. The boy came there to release his cow. After that she returned home speedily and reported the matter to her mother. Her mother then along with her went out and taking the help of others managed to reach the house of the accused. The accused was found in his homestead. She showed the accused to her mother as culprit. The accused stated to her mother that he to save the victim from running

buffalo caught hold her. Her mother without replying anything returned home. Her mother reported the matter to her father over telephone. Her father returned home from office. All of them went to Masimpur police out post. Police of the outpost told them that the case could not be registered in that out post. Then they went to Borkhola P.S. and disclosed the matter to the O/C who told them to visit on the following morning to file written *ejahar*. On the following morning at about 10.00 they reached Borkhola P.S. again. She was medically examined by doctor. She gave statement before the Magistrate. Ext-3 is her statement.

- 10. In the cross-examination she denied the defence plea of running buffalo. She also denied the suggestion that at that time there were three numbers of buffalo and also denied that the accused did not at all touch her body. She also denied that she at the instance of villagers inimical to the accused filed false FIR and being tutored by her parents and members of Bajrangdal gave statement before the Magistrate and adduced false evidence.
- 11. P.W.3, the father of the victim, deposed that on the month of last previous Ramjan one day at about 4-15 P.M. the P.W.1 over telephone asked him to return home at the earliest. He immediately returned home by his bike. On query his wife (P.W.1) told that the accused Nizam pressed the victim on the way to tuition. He then reported the matter to A.P. member namely Liton Ch. Das who suggested to take the help of police. After that he along with Aditya Koiri, the private tutor of the victim, and P.W.1 and P.W.2 and one Chakraborty at first visited Masimpur police out post. In-charge of the outpost suggested them to report the matter to Borkhola P.S. Then they went to Borkhola on that night. O/C of the P.S. suggested them to lodge written complaint on the following morning as it was night. On the following morning he (P.W.3) along with his wife and the victim with an

auto went to the P.S. His wife lodged the written FIR. FIR was written by one petition writer of Borkhola locality. He further deposed that during the investigation I.O. seized one birth certificate of the victim vide Ext-2. He disclosed that he was under threat by some unknown relatives of the accused, who asked him to withdraw the case. He also disclosed that on that morning i.e. on the morning of date of recording his evidence one Alim of village Tupkhana met him with a request to withdraw the case otherwise there would a chance of harm to be caused by the accused on release. P.W.3 also disclosed his apprehension about the future consequence while deposing evidence. He denied the defence suggestion that at the instance of vested interested person inimical to the accused his wife lodged the false case against the accused.

- 12. P.W.4, Aditya Koiri, deposed that at the material time the victim girl a student of Class –VI used to take private tuition from him at his home at around 3-30 p.m. On the date of occurrence she did not attend the private tuition. On that day at around 4/4-30 p.m. her parents over telephone called him and he immediately went to their house. On his arrival he found the victim as crying. Mother of the victim reported that while the victim was going to attend private tuition, on the way one Nizamuddin Mazumdar misbehaved with her (victim). He further deposed that he then returned to attend other students. Said Nizamuddin is identified in the Court. P.W.4 further deposed that on the following day he along with the victim and her parents went to Borkhola P.S. In the cross-examination defence has brought the topography of the area where the accused reside and also stated that on call of the police he went to the P.S.
- 13.. P.W./5 is the M.O. According to him on 26-06-16 while he was working as M.O. & H.O. at Borkhola PHC examined the victim on police requisition and found no injury on her person.

In the cross-examination he stated that he examined the victim at about 10.00 a.m.

14. P.W.6 is the I.O. According to him on 26-06-16 O/C of P.S. receiving *ejahar* of this case registered the same and entrusted him for investigation. During investigation he examined the witnesses, visited the P.O. and seized original birth certificate of the victim. He further deposed that he sent the victim for medical examination and also produced the victim before the Magistrate for recording statement U/S 164 Cr.P.C. On 05-07-16 he arrested the accused from Srikona Police patrol post being handed over by the Public. He further deposed that before that he made house search of the accused for apprehension but the accused was found absconding. Subsequently he submitted charge sheet Ext-6.

In his cross-examination he stated that he accompanied by parents of the victim, visited the P.O. According to the statement of the victim the P.O. is near the shop of Abbas. He further stated that shop and house of Abbas adjacent to each other. He did not find any of them in the house and for that he could not examine any of them. There is no other house in the near surroundings of the house of Abbas.

15. D.W.1 Abbas Uddin deposed that he had got a stationary shop at a distance of around 15-20 cubits from his house adjacent to END band to the west. According to him on the date of alleged incident at about 3/3-30 p.m. while he was closing the door of his shop to attend Asar prayer suddenly saw three numbers of buffalo were running to the north. He also noticed one girl being frightened by running buffalo fell down in front of his shop on the END bandh. He also noticed the accused to come to that place from the South. Accused was the owner of the buffalo. On query the girl told that she did not get any pain. By this time the accused also arrived there. Seeing the accused

girl abused the accused stating him like a buffalo. The accused then replied asking whether the girl was blind and did not notice the running buffalo. The girl then stated that she would give a bichar and returned home. The D.W. further deposed that the girl used to attend private tuition in the house of Aditya Koiri. He after leaving both the accused and the girl went to his house and changing dress went to mosque for prayer and returned home after evening for "Iftar". Police did not come to his shop or in front of the shop. He did not report anything about the alleged incident to anybody. He gave topography of the place of occurrence. According to him at the material time the P.O. was lonely

16. From the above evidence it is evident that evidence are corroborative with each other in all material particulars except some minor ignorable discrepancies. During argument learned P.P. has submitted that in the instance case the age of the victim, presence of the accused and the victim at the material time at the P.O., are not disputed. It is also, submitted that evidence of the victim fully corroborated her statement made U/S 164 of Cr.P.C. and the sole testimony of the victim in the absence of any some convincing ground for false implication can be totally relied upon. Further it is submitted some defects in the investigation cannot give rise to any doubt about the veracity of the testimony of the witnesses and to make the prosecution case a doubtful one. In support of the contentions learned P.P. cited following decisions focusing the relevant points of observations.

1. Ranjit Hazarika –Vs- State of Assam February 1996. Equivalent citations (1998)8 SCC 635

"Nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake.."

2. 2016 Cr.L.J. 324.

Where observation of Hon'ble Supreme Court as made in State of Punjab –Vs- Gurmit Singh and others reported in 1996 to SCC 384 (AIR 1996) SC. 1393 is as follows:

"The inherent bashfulness of the females and tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances."

3. Om Prakash –Vs- State of U.P. AIR 2006 SC. 2214 referred in 2016 GLR 461:

"It is observed by Hon'ble Apex Court that it is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a Doctor."

17. Learned P.P. further strongly submitted that although the defence side tried to demolish the positive evidence of all the material witnesses cross-examining them at length made some futile attempts to establish that the P.O. was not a lonely place and in the surroundings there were many houses but the D.W.1 in his cross-examination foiled

this attempt stating that the P.O. at the material time was a lonely place and he did not notice any other person at the P.O. except the victim and the accused, and no other person was also arrived there. It is further submitted that presence of the accused and the victim at the material time at the P.O. is virtually admitted by the accused, and the defence plea of running buffalo and use of abusing word towards the accused is not at all reliable. Further submission is that there is no delay in lodging FIR and the defence suggestion of inimical relation is very hypothetical in nature and thus cannot be relied upon without any material on the record.

- 18. Learned defence counsel has submitted that since the very beginning stage of the investigation defence took the same plea of running buffalo etc. and there is no deviation from it even in the later stage of the trial. Further submission is that the testimony of Defence witnesses as per law is also to be treated at par with the prosecution witnesses by giving similar weightage. In support of the submission the learned counsel cited the following decisions highlighting observations:1) 1989 Cr.L.J (Gau)1742 "In Dudh Nath Pandey v. State of U.P., AIR 1981 SC 911: (1981 Cri L J 618), it had been ruled that the defence witnesses are entitled to equal treatment with those of the prosecution; that Courts ought to overcome their traditional instinctive disbelief in defence witnesses; and that often they tell lies but so do the prosecution witnesses."
- 2) 1992 Cr.L.J. (Gau)1197 "It is well settled principle of law that merely because a person is examined on behalf of the accused, his evidence should not be taken lightly and in fact his evidence stands on the same footing as that of witness for the prosecution"

It is evident from the entire evidence on record that the alleged P.O. is near the shop of D.W.1. who stated that after 10-12 days of the alleged incident the accused was arrested. According to him on request of the son of the accused he appeared as witness in this case. Under such circumstances question naturally comes as to why he did not disclose anything about the alleged incident as claimed to have been seen by him, to anybody. The I.O. in his cross-examination stated that house and shop of the said Abbas is adjacent to each other and on his visit to the P.O. he did not find any person in the house and for that he could not examine any of them. He also deposed that he did not find the accused in the house and was found absconding. If it is believed question will come as to why the accused absconded for many days and as to why he did not disclose about his plea so taken to anybody and also to the IO after his apprehension. Evidence of the IO discloses that there was no other house in the near surroundings of said Abbas and for that he could not examine any other person. Defence suggestion that there were 5-6 numbers of houses in the surroundings of said Abbas is difficult to be believed in the absence of anything brought in the evidence of said Abbas as D.W.1. The defence plea that the material witnesses at the instance of vested interested persons inimical to the accused the FIR was lodged. But surprising enough that the defence side has not made any slightest attempt to bring anything in the crossexamination of any of the material witnesses even in the evidence of D.W.1 to suggest that there had been some inimical relation of the accused with some villagers who might have induced the complainant to lodge false FIR. That being so, no force is found to conceive existence of any slightest probability of false implication, and that too, by parents of the minor victim girl taking the risk of jeopardizing the family reputation and future of the victim. Further it is also not believable that teacher of the victim would also depose falsely against the accused under the facts and circumstances of this case. There is no contradiction with regard to any material fact or circumstance of this case. Similarly there is also no material omission to affect the root of

the prosecution case. It is also not believable that a minor girl a student of class-VI could depose falsely against any unknown person involving her modesty. There is no delay in lodging of the FIR. However cause of some delay in filing written ejahar is clearly evident in the evidence on record. Taking evidence in its entirety I find no reason to disbelieve the testimony of the victim girl corroborated by other reported witnesses.

- 19. In view of the above discussion of evidence, contention and consideration of evidence on its entirety it is held that prosecution case is proved beyond all reasonable doubt U/s Sec.8 of POCSO Act. Therefore, the accused is held guilty and convicted accordingly. Heard the accused on the question of sentence. His statements are recorded in separate sheet tagged with the case record.
- 20. Having due regard to his statement and also consideration of all aspects of this case and also evidence given by PW 3 to the effect that he was under threat by some unknown relatives of the accused and there was request for withdrawal of the case otherwise there would be a chance of causing harm by the accused after his release as stated earlier, and considering the nature of offence committed against the minor girl student of class -VI I am of the view that the accused should not be shown any sort of leniency. So, I convict and sentence the accused U/S 8 of POCSO Act to undergo rigorous imprisonment (RI) for a period of 3 years along with fine of Rs. 5000/- and in default shall further undergo RI for a period of 2 months.
- 21. Victim compensation- having considering all aspects of this case and the fact that a minor girl of around 13 years and a student of class-VI had to undergo mental pain and sufferings for the act of the accused, I am of the view that an amount of Rs. 15,000/- may be reasonably assessed as compensation U/S 357-A of Cr.P.C, to be paid either to the victim or to her mother, the complainant as compensation.

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copy of the judgment be forwarded to the Secretary Political

Department, Govt. of Assam for taking necessary steps for payment of

the compensation to the victim

22. Copy of the Judgment be furnished to the accused free of

cost as per provision of Sec. 363 Cr.P.C. and to be forwarded to the

District Magistrate as per provision of Sec. 365 Cr.P.C. Copy of the

judgment along with copy of statement of the victim, complainant and

copy of the FIR shall be forwarded to the Secretary DLSA

Judgment is pronounced and delivered in the open Court under

my seal and signature on this 7th Day of December, 2016.

(Shri K. Choudhury) Sessions Judge, Cachar, Silchar.

Dictated & corrected by me.

(Shri K. Choudhury) Sessions Judge, Cachar, Silchar.

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR.

Spl. POCSO Case No. 13/2016.

APPENDIX

(A) PROSECUTION WITNESSES: -

- PW. 1 Purobi Rani Das.
- PW. 2 Piyali Rani Das.
- PW. 3 Pannalal Das.
- PW. 4 Aditya Koiri.
- PW. 5 Dr. Badiruz Jaman.
- PW. 6 Alongbar Basumatari.(I.O)
- (B) <u>DEFENCE WITNESSES</u>: Abbas Uddin.
- (C) <u>COURT WITNESSES</u>: NIL.
- (D) PROSECUTION EXHIBITS: -
- Ext. 1 F.I.R.
- Ext. 1 (1) Signature of P.W.1.
- Ext. 2 Seizure list.
- Ext. 2(1) Signature of P.W.1.
- Ext.3: Statement of P.W.1.
- Ext. 3(1) to 3(4)— Signature of P.W.2.
- Ext. 4 Medical report.
- Ext. 5 Medical report.
- Ext. 4 (1) Signature of PW-5.
- M.Ext- Photo copy of birth certificate of victim.
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) COURT EXHIBITS: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: Nil.

(Shri K. Choudhuy), Special Judge, Cachar, Silchar.