### IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

# Special Case No.33/2017

State of Assam
Versus
Sri Ajit Kumar Barman ..... Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose Special P.P.

Ld. advocate for the accused: Mr K. Roy

Evidence recorded on : 05.9.18, 08.11.18, 19.12.18 & 12.3.19

Argument heard on : 12.3.2019

Judgment delivered on: 12.3.2019

#### J U D G E M E N T

1. The prosecution story in brief is that on 10.9.2017 the informant Smti Malaya Deka, Chairperson, CWC, Kokrajhar lodged the first information report before the Officer-in-charge of Gossaigaon Police Station stating that on 12.8.17 at about 10.30 A.M. to 11 A.M. a minor girl Miss Salanti Murmu, aged about 11 years had sexually abused by Head-Master-accused Sri Ajit Barman taking advantage of absence of other teachers and students. In presence of about 7/8 students the accused Ajit Kumar Barman had sexually assaulted on the minor victim. Thereafter, the victim informed about the incident to her parents who accordingly intimated the same to the Managing Committee. But, the committee did not take any step and finally the FIR is lodged through the Chairperson, CWC, Kokrajhar.

- 2. On receipt of the first information report in Gossaigaon P.S. the case was registered as Gossaigaon P.S. case No.382/2017 under sections 354/354(A) of IPC, R.W. section 8 of POCSO Act and the case was endorsed to S.I. (UB) Ramjan Ali Sk. for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses including the victim girl and after completion of the investigation the charge sheet has been filed by the I.O. under sections 354/354(A) of IPC, R.W. section 8 of POCSO Act against the accused Ajit Kr. Barman.
- 3. After filing of the charge sheet and on appearance of the accused person and after hearing both sides the charge under section 8 of POCSO Act was framed against the accused Ajit Kumar Barman. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. The prosecution side examined as many as 07 (seven) witnesses including the victim and the informant as follows:-

PW 1 Smti Malaya Deka (Informant),

PW 2 Smti Mahila Murmu.

PW3 Smti Mahamni Hasda,

PW4 Sri Moka Hembrom,

PW5 Sri Motharam Mardi,

PW6 Miss Salanti Murmu (Victim) and

PW7 Sri Budrai Murmu

5. The accused person took the plea of total denial while recording his statement under section 313 of Cr.P.C., and declined to adduce any evidence.

#### **Point for determination:**

Whether the accused committed the offence of sexual assault to the minor victim ?

## **Discussion, Decision and Reasons thereof:**

- 6. To arrive at a just decision I have thoroughly perused the evidence of the prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, Informant of this case deposed that in the month of Sept/17 NERSWN came with a case and they produced a girl about 11 years of age who was reading in the class-V at the time of incident. Further stated that she recorded the statement of the girl and she stated that the incident took place about one month ago. On the day of the incident while she was writing in the black board teacher Ajit Kr.Barman came near to her and pressed on her breast and when she tried to restrain then he again pressed her breast tightly and then she cried and somehow managed to come out from grab of the accused. Further she deposed that she enquired the matter to the teacher but, he denied to say anything about the incident and that she lodged the FIR. In cross she stated that she never visited to the place of occurrence.
- 8. PW2 deposed in her evidence that she heard the accused being the teacher of the school touched the breast of the victim Salanti Murmu. Further she stated that at the time of incident the victim Salanti Murmu was a student of that school and thereafter she heard that the police arrested the accused. In cross she stated that she does not know about the occurrence.
- 9. PW3 stated in her evidence that at the time of incident the victim was studying in the class-VI and at present she is studying in another school. Further deposed that she heard the accused touched the breast of victim Salanti and she heard about the incident from the friend of Salanti.In cross she

stated that she has not heard about the incident from the victim and could not say from whom she heard about the incident.

- 10. PW4 deposed in his evidence that at the time of incident the victim Salanti Murmu was studying where the accused worked as teacher. Further stated that he heard that some incident took place with the victim Salanti Murmu but, he does not know what happened with the victim Salanti Murmu.
- 11. PW5 stated in his evidence that at the time of incident the victim Salanti was studying in the school of the accused. He further deposed that he heard that some incident took place with the victim Salanti but, he does not know the real incident.
- 12. PW6, victim of this case deposed that the accused was her school teacher. She further deposed that at the time of incident she was studying in the class-V and on the day of incident when she was in class, her teacher-accused was taking Assamese Crammer class. Accused asked her to read the grammar but, she could not read for which accused scolded her and about to hit her. She further deposed that she informed about the incident to her parents and she does not know who lodged the FIR.
- 13. PW7, father of the victim deposed in his evidence that at the time of incident his daughter was studying in the school of the accused. Further he deposed that he heard the accused-teacher scolded his daughter as she could not read and except that no other incident took place.
- 14. So, from the discussion of the testimonies of the prosecution witnesses it is seen that the victim herself and her father did not bring any allegation any sexual assault against the accused. As per them he simply scolded her as she could not read the grammar in the class. And they also not aware of about the lodging any FIR against the accused.

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15. The other prosecution witnesses i.e. the PW2 to PW5 heard that accused touched the breast of the victim. But, none of the witnesses have heard the same from the victim nor they have seen the occurrence. PW1, the Chairperson lodged the FIR only on complaint received from NERSWN. Accordingly, the informant brought the allegation of sexual assault on the victim by the accused in her FIR as well as in her evidence. But, conviction cannot be based only on the evidence of the informant the victim herself and her father did not support the prosecution version. There is no corroborating evidence that accused had touched the breast of the victim nor there is any evidence that accused had sexual assault on the minor victim.

16. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Ajit Kumar Barman under section 8 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the Court on this 12th March/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge,

Special Judge, Kokrajhar Kokrajhar