#### IN THE COURT OF SPECIAL JUDGE, BARPETA

# Special POCSO Case No. 21/2018

(Arising out of Baghbor P.S. Case No.63 of 2018

U/S 457 IPC & Section 18 of Protection of Children from Sexual

Offence Act, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 11.07.2018

State of Assam

- Vs -

Abdul Latif.....Accused.

Date of Recording Evidence on – 23.08.2018, 05.12.2018, 11.01.2019 &

14.03.2019

Date of Hearing Argument on – 06.05.2019

Date of Delivering the Judgment on - 10.05.2019

# Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused------Mr. Ayen Uddin Ahmed, Ld. Advocate.

## **JUDGMENT**

1. The prosecution case, as enumerated, in the FIR, is that on 23.03.2018 one Khudeja Begum lodged an FIR in the Mondia out post alleging inter-alia that on 31.01.2018 at about 2:30 am accused named in the FIR entered into the bedroom by digging earth of the foundation of the house and touched the breast and check of the minor girl of the informant with sexual intent while she was sleeping in her room. However, when the victim girl having got her sense, got up from her

sleep and shouted accused ran away speedily by opening the door. It is stated that she identified the accused as there was electricity light in her house. It is further stated that some delay has been caused in lodging the FIR as the matter was first placed in village mel for a settlement. Hence the case.

- 2. Following the information as above, Mondia out post entered the same in the general diary vide GDE No.439 dated 23.03.2018 and forwarded the same to Baghbor police station for registering a case which in turn registered a case being Baghbor P.S. case No.63/18 dated 24.03.2018 u/s 457 IPC and section 18 of POSCO Act, 2012. Accordingly, ASI Mahadev Bagchi was entrusted to investigate the case.
- 3. During investigation, the I/O visited the place of occurrence, recorded the statement of the witnesses and also sent the victim girl to court for recording her statement u/s 164 Cr.P.C. Thereafter, concluding investigation the I/O finally laid the charge sheet against accused Abdul Latif u/s 457 IPC and Section 18 of POCSO Act.
- 4. Having received the charge sheet, cognizance of the offence was taken and accused was summons to face trial.
- During the course of time, when accused entered his appearance in court, perusing the materials available on record and hearing the learned Addl. P.P. further prosecution evidence stands closed.
- 6. During the course of trial, the prosecution in order to substantiate its case examined as many as 6 witnesses including the alleged victim girl. Concluding prosecution evidence, giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 7. Accused was examined u/s 313 Cr.P.C. However, accused denied the prosecution evidence as false and misleading, but on being asked, accused however, declined to adduce defence evidence. His plea is total denial of the prosecution case.

## 8. Now point for determination ;-

 Whether on 31.01.2018 at 2:30 am accused illegally entered into the house of the informant as alleged.

### 9. Discussion, Decision and reasons for such decision :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the prosecution evidence available on record.

- 10. The learned counsel Smti. Priti Das appearing for the State submitted that prosecution all together examined 6 witnesses including the victim, informant and investigating officer and all of them adduced credible evidence to substantiate the charge against the accused. Hence, the learned Addl. P.P. submitted that accused be punished accordingly.
- 11. On the other hand, the learned defence counsel appearing for the accused assailed the prosecution case on various counts.
- 12. At the first instance, the learned defence counsel submitted that the prosecution case is totally false and concocted. According to the learned counsel the prosecution case is false as the alleged incident took place on 31.01.2018 but the FIR was lodged only on 23.03.2018. It is contended that the FIR was lodged after 1 month 23 days of the alleged incident without having any proper explanation for delay. So, on this count alone, prosecution case goes. It is further contended by the learned counsel that prosecution case is unworthy of credit because in the FIR it was specifically alleged that accused touched the breast and check of the victim girl by entering into her bedroom by digging earth of the foundation of the house at the dead of night and it was also stated that at the time of said incident there was electricity light in the bedroom in which accused was identified. In her statement recorded by Magistrate u/s 164 Cr.P.C. (Ext.2) the victim girl admitted that the incident occurred at 31.01.218 and when she was sleeping she feel someone touching her body and at that time the light of the room on in which she identified the accused as her uncle Abdul Latif but he ran away, as soon as she raised alarm. Her father and grand mother also saw Abdul Latif running away and she then disclosed that fact to her father and grand mother. It was around 2:30 am but as rightly contended by the learned defence counsel.
- 13. In the course of her evidence PW-1Khudeja Begum, the informant failed to with stand her cross examination in her evidence-in chief stated that incident occurred on 31.01.2018 at 2:30 am while accused entered into the bedroom by digging earth of the foundation of the house. But in her cross examination she stated that she did not provide any explanation for 53 days delay in lodging

the FIR. She further deposed in her cross examination that accused is the brother of her husband and his house is also adjacent to her house and he had the excess in her house. She also stated that there was no such valuable property in her house except one showcase and one bed. There was no valuable ornaments and money in her house. She also stated that the hole dug out by accused was field up/closed on the next day. She further stated that she went for sleep at 10 pm light were switch off.

- 14. PW-2 the alleged victim girl in her cross examination deposed that there are three rooms in her house and she read up to 8/9 and after taking dinner she go for sleep but keeping her light on. On the day of incident her father, mother and grand mother were also present in the house. She also stated that there were no valuable property in her house and she cannot say whether there was any land dispute between her parents and accused who is her uncle.
- 15. PW-3 who is the father in his cross examination deposed that one Latif, Ahed Ali, Babu etc saw the hole dugout by accused in his house on the day of incident. In his cross examination he stated that accused Abdul Latif had a plot of land measuring 53Ls where Mokshed Ali, father of the victim girl dug out a pond which was purchased by him but could not produce anything to show that he purchased the said land from accused. Therefore, it appears that there is a land dispute between accused and his brother, who is the father of the victim girl. Interestingly, the prosecution failed to examine any independent witness namely-Latif, Ahed Ali and Babu as deposed by PW-3 Mokshed Ali.
- 16. PW-4 Rup Bhanu in her evidence also stated that incident occurred about 2:30 to 3 am. She identified the accused in electric light. In her cross examination she stated that her son Mokshed dug a pond in the land of accused but he did not execute any registered sale deed. The land still exist in the name of accused and FIR was also lodged after 52 days. She also stated that she had not seen the accused on the day of alleged occurrence and accused also filed a case against them.
- 17. PW-5 Wahed Ali also deposed that he had not seen but came to know about the incident.

  He also saw a pond in front of the house of informant but he do not know who is the owner of the pond. There are residence of one Firdus Ali and Jabed Ali around the house of informant. But as it

appears these witnesses were not examined.

- 18. Having carefully considered the evidence of the prosecution witnesses from PW-1 to PW-5, this court, as rightly contended by the learned defence counsel found no truth in the allegation of the informant. Admittedly, accused is the own uncle of the alleged victim girl and his house is also adjacent. There is existing land dispute between them. There is no evidence that accused in fact entered into the house of the informant by digging earth because of the contradiction in the evidence of the prosecution witnesses. PW-1 says that the hole was put up /closed on the next day of the incident. PW-3 stated that the hole was seen by I/O (PW-6. The I/O did not corroborate this fact during his cross examination. In his cross examination the I/O stated that the victim girl did not state before him that accused touches her check and breast. PW-3 Mokshed Ali also did not state before him that accused touches the check and breast of his daughter by entering into his room by digging earth. PW-4 Rup Bhanu did not state before him that she identified the accused in the electric light. PW-5 who also did not state before him that he visited the house of Mokshed Ali and saw the hole dug by accused. Therefore, from the evidence of I/O it appears that the evidence adduced by PW-1, PW-2, PW-3, PW-4 and PW-5 are wholly contradictory and unworthy of credit as what has been stated by them in court has not been stated by them before the I/O at the time of recording their statement which is first in point of time. Non furnishing of proper ground for delay in lodging the FIR also negate the prosecution case. Non examination of independent witnesses also renders the prosecution case unworthy of credit.
- 19. Therefore, considering all the prosecution evidence available on record as a whole, this court come to unerring findings that prosecution failed to bring home the guilt of accused u/s 457 IPC and Section 18 of POCSO Act.
- 20. In the result, this court has no option but to acquit the accused Abdul Latif from the alleged offences u/s 457 IPC and Section 18 of POSCO Act, 2012 on the ground of benefit of doubt and set him at liberty forthwith.
- 21. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided U/S 437(A) Cr.P.C.
- 22. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his

information as provided in section 365 Cr.P.C.

23. Given under my hand and seal of this Court on this 10th day of May,2019, at Barpeta.

Dictated & Corrected my me

Sd/-

Sd/-

(Sri C. B. Gogoi)

(Sri C. B. Gogoi)

Special Judge, Barpeta.

Special Judge, Barpeta.

## **APPENDIX**

1. The prosecution has examined the following 6 nos. of witnesses :-

PW-1 = is Khudeja Begum, the informant.

PW-2 = is victim(X).

PW-3 = is Mokshed Ali.

PW-4 = is Rup Bhanu.

PW-5 = is Wahed Ali.

PW-6 = is Mahadeb Bagchi, the I/O.

2. The prosecution has exhibited following document :-

Ext.1 = is the ejahar.

Ext.= 1(1) is the signatures of informant.

Ext.2 = is the statement of victim (X) u/s 164 Cr.P.C.

Ext.2(1) & 2(2) = are the signatures of victim (X).

Sd/-

(Sri C. B. Gogoi) Special Judge, Barpeta.