DISTRICT: JORHAT

IN THE COURT OF THE SPECIAL JUDGE, JORHAT

Ref:- Special Case No. 74/2018

G.R. Case No. 448/2018

Under Section 10 of POCSO Act, 2012

State Prosecution

Vs.

Badan Ch. Das Accused

Date of framing Charge: 20.02.2019

Date of Evidence : 29.07.2019 and 13.09.2019

Date of argument : 13.09.2019

Date of judgment : 20.09.2019

APPEARANCES:-

Advocate for the Prosecution: Shri Muhidhar Dutta, Special. PP, Jorhat

AND

Advocate for the accused person: Shri Biswanath Deb, Advocate.

JUDGEMENT

- 1. The prosecution case in brief, is that the Complainant Shri Jibon Urang lodged an ejahar on 28.08.2019 before Borhulla police station alleging that on 25.08.2019, during school hours his minor daughter [X] aged about 10 years, a student of class IV of Tipomia Urang Gaon LP School was sexually harassed by the Head Master of the school namely the accused Badan Ch. Das.
- 2. On the basis of the said ejahar, Borhulla P.S case No. 70/18 dtd.28.08.2018 was registered against the accused under Section 10 of the POCSO Act, 2012 and the matter was taken up for investigation.
- 3. During the course of investigation, IO visited the place of occurrence, prepared sketch map of the same, recorded the statement of witnesses and forwarded the accused after arresting him and sent the victim[X] to be medically examined by a doctor but she refused medical examination and also got her statement recorded under Section 164 of Cr.P.C. Then on completion of investigation, IO laid charge sheet against the accused to stand trial in the Court under Section 10 of the POCSO Act, 2012. On production before the Court of the

learned SDJM(M), Titabor, Jorhat as required under the statutory provision of law, relevant copies were furnished to the accused as per provision of Sec.207 of Cr.P.C and the case was committed to the Court of Hon'ble Sessions Judge, Jorhat for trial finding the case to be exclusively triable by the Special Court. Thereafter, the case was transferred to this Court for trial.

- 4. On production before this Court, upon hearing the learned counsel for both sides on the point of consideration of charge and perusing the relevant materials as well as finding prima facie case against the accused, my learned predecessor framed formal charge against the accused under Sections Section 10 of the POCSO Act, 2012. Particulars of accusation of the above charge on being read over and explained to the accused, he pleaded not guilty and claimed to be tried.
- 5. In order to bring home the charge against the accused, the prosecution examined four numbers of witnesses including the Complainant and the victim [x]. Going by their testimony, prosecution closed its evidence. Without anything incriminating in their evidence, examination of the accused person under section 313 of CrPC was dispensed with. Accused denied to examine any defence witness.
- 6. I have heard the argument advanced by the learned counsel for both sides. I have also scrutinized the entire evidence of the witnesses as well as the relevant materials on record.

POINTS FOR DETERMINATION

- 7. The points for determination in this case are: -
- "A. Whether on 25.08.2018 at day time at Tipomia Organg Gaon LP School under Borholla PS, accused Badan Ch. Das committed aggravated sexual assault upon the victim [X], a minor girl student of Class-IV of the said school aged about 10 years and thereby committed an offence punishable under sec.10 of the POCSO Act, 2012?"

DISCUSSION, DECISION AND REASONS THEREOF:

- 8. I have heard the argument advanced by the learned counsel for both sides and also perused the entire evidence available on record. Though both the prosecution and defence counsel has submitted that the accused may be acquitted of the offences he is charged with, the charges against the accused are of a serious nature and considering the gravity and seriousness of the offence, I consider it appropriate to independently apprise the evidence on record before arriving at any finding touching the merits of the present case. Let me now discuss the evidence available on record to see as to whether the prosecution is able to prove the above points.
- 9. PW-1 /Victim[X] deposed that she is not aware of her age. Her father might have told her about her age but she did not remember the same. She belonged to Urang Gaon. The name of the Head Master of her school Tipomia Urang Gaon L.P School is Badan Chandra Das. The incident took place about one year back. At that time, she was present in the school and had gone to bring water from the filter located in the Office room. When she tried to pour water,

the filter fell down and broke. Upon inquiry by her Head Master, she told him that the filter got broken by her. The accused slapped her and made her catch her ears and stand. She told her father about the incident. Her father lodged the ejahar. She was not aware why her father lodged the ejahar. The police had taken her for medical examination which she refused. Magistrate recorded her statement under section 164 Cr.P.C. Exhibit 1 is her statement under section 164 Cr.P.C and exhibit 1 (1) and 1 (2) are her signatures.

- 10. In her cross-examination PW-1/Victim[X] stated that Badan Chandra Das, Head Master of the school is like her grandfather. He is a nice person and loves her. He retired a few days after the incident. Nothing is happened to her as stated in the ejahar by my father.
- 11. PW-2 Jiban Urang, Complainant deposed that the victim [X] is his daughter. He knows the accused Badan Chandra Das of the present case who was the Head Master of Tipomia Lower Primary School. At the time of the incident his daughter was studying in the fourth standard. His daughter is about 12 years of age at present. He lodged the ejahar about one year back. He came to know that his daughter was slapped in the school by Head Master Badan Ch. Das and went to the school. His daughter also confirmed that she was slapped by Head Master Badan Ch. Das. She did not tell him anything else. Exhibit 2 is the ejahar and exhibit 2 (1) is his signature.
- 12. In his cross-examination, PW-2 stated that he is not aware about the contents of the ejahar. He is not aware when the ejahar was lodged. He is also not aware about the incident mentioned in the ejahar. The ejahar was written by someone from the village without his consent and he was asked to sign the same. He signed the ejahar without knowing the contents. The Head Master had come to the school recently and he is an elderly person. He is a well behaved person.
- 13. PW-3 Raju Munda deposed that he knows the victim [X] of the present case. He also knows accused Badan Ch. Das who was the erstwhile Head Master of the Tipomia Urang Gaon L.P. School of their village. The victim is a student of Tipomia Urang Gaon L.P. School. The incident took place in August, 2018. At the time of the incident, he was working in the paddy field. He came to know about the incident from one boy of his family who also studies in the said school.
- 14. In his cross-examination, PW-3 stated that he had no personal knowledge about the incident. He did not know what actually transpired between the accused and the victim. He did know if the made allegation made against the accused is incorrect.
- 15. PW-4 Manoj Munda deposed that he knew the accused as well as the victim of the present case. He is the President of the Managing Committee of Tipomia Urang Gaon L.P. School. On 27.08.2018, he received information about the incident and when he went to the school and inquired about the same from the accused, the accused told him that he committed a mistake. I do not know anything more about the incident.
- 16. In his cross-examination PW-4 stated that he does not have any personal knowledge about the incident. He does not know when the incident took place. Police interrogated him in connection with the present case. He had not stated before the police what he had stated before the Court today. He does not know

what mistake was committed by the accused. He does not know if the entire incident is made up.

- 17. In the present case, the victim[X] has deposed nothing as stated in the Ejhar. Infact , she has deposed that when she tried to pour water, the filter fell down and broke as a result of which , the accused slapped her and made her catch her ears and stand. When she told her father about the incident, her father lodged the ejahar. She was not aware why her father lodged the ejahar.
- 18. PW-2 who is the father of the victim[X] and Complainant in the present case deposed that his daughter also confirmed that she was slapped by Head Master Badan Ch. Das and she did not tell him anything else. That he was not aware about the contents of the ejahar. He was not aware when the ejahar was lodged. He is also not aware about the incident mentioned in the ejahar. The ejahar was written by someone from the village without his consent and he was asked to sign the same. He signed the ejahar without knowing the contents. From the perusal of the Ejhar it is seen that the Complainant had only put his signature on the Ejhar and it is written by one Deba Kumar Kurmi who has made an endorsement in the Ejhar that he is not aware about the incident.
- 19. PW-3 has no personal knowledge about the incident and heard about the same from a boy in his family who also goes to the same school.
- 20. PW-4 also does not have any personal knowledge about the incident.
- 21. Thus, from the evidence on record, it is seen that an incident of the victim[X] breaking the water filter in the school for which she was punished by the accused was blown out of proportion by the people in the village who also lodged the Ejhar with the consent of the Complainant by giving the whole incident colour of aggravated sexual overtures. 15. From the aforesaid evidence it is apparent that there is nothing to show that the accused kidnapped the victim[X]/ PW-2. Therefore there is nothing on record based on which accused person can be found guilty of offence under Section 10 of the POCSO, 2012.
- 22. In view of the above position and the materials available on record, as discussed above, I have come to the conclusion that the prosecution has failed to prove that accused Badan Ch. Das committed the alleged offence under Section 10 of the POCSO, 2012.

ORDER

- 23. In the result considering the totality of the evidence, documents on record and facts of the case, it is found that the prosecution has failed to prove the charge under Section 10 of the POCSO, 2012 against the accused person . In view of the above discussion, this Court is of the opinion that the accused person is acquitted of the charge under Section 10 of the POCSO, 2012. Set him at liberty immediately.
- 24. Accused person is allowed to go on with bail for next six months as per the provision of section 437A Cr.P.C as amended up-to-date.
- 25. Send a copy to the District Magistrate, Jorhat U/s 365 Cr.P.C.

- 26. File be consigned to Record Room subject to compliance of Section 437A CrPC.
- 27. Judgment is pronounced in the open court, written in separate sheets and tagged with the record.

Given under my hand and seal of this Court on this the 20^{th} day of September, 2019.

(P. Kataki)

Special Judge, Jorhat

APPENDIX

WITNESSES FOR THE PROSECUTION:

P.W.1 ... Victim X

P.W.2 ... Sri Jibon Urang

P.W.3 ... Sri Raju Munda

P.W.4 ... Sri Manuj Munda

WITNESSES FOR THE DEFENCE:

Nil.

WITNESSES FOR THE COURT

NIL

EXHIBITED DOCUMENTS:

Ext.1 ... Statement of victim u/s 164 of Cr P C

Ext.2 ... FIR

Special Judge, Jorhat.