#### IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Shri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

# Sessions Spl. Case No. 26/2014 U/S 354(A) IPC r/w Section 12 of the POCSO Act

State of Assam

-VS-

Md. Mohibul Hoque S/o Late Abdul Sattar R/o Village- Bogoribari,

P.S. – Mikirbheta

Assam. ..... Accused

Date of Charge : 16.03.2018.

Date of Evidence : 24.05.2018, 12.03.2019, 25.07.2019,

09.09.2019, 09.10.2019, 29.11.2019.

Date of S/D : 27.01.2020
Date of Argument : 05.02.2020
Date of Judgment : 18.02.2020

#### **Appearance for the Parties**

Advocate for the State :- Mr. A. Kalam, Spl. PP, Morigaon.

Advocate for the Accused :- Mr. N. U. Ahmed, Advocate.

#### <u>JUDGMENT</u>

Prosecution case in brief is that on 16.09.2013, Md. Azizul Hoque lodged an FIR with Morigaon Police Station alleging inter-alia that on 31.08. 2013, at about 3:00 PM, her minor daughter/victim 'A' (name withheld) aged about 12 years and student of Class VI, went to the house of the accused, Md. Mohibul Hoque to take tuition and during said tuition class, the accused touched her breast and outraged her modesty. On knowing about this incident from the victim, he informed the matter to local villagers and also to the

Teachers Association and in spite of waiting for few days, on failure to get amicable settlement he lodged the FIR with delay.

- 2. On receipt of the FIR, Mikirbheta PS Case No. 204/2013 u/s 354(A) IPC r/w Section 12 of the POCSO Act, 2012 was registered and investigated into. During investigation, the victim was medically examined and statement of the victim was recorded u/s 164 Cr.P.C. and on completion of investigation, the Investigating Officer (I/O) submitted charge sheet against the accused, Md. Mohibul Hoque for trial u/s 354(A) IPC r/w Section 12 of the POCSO Act, 2012 showing the accused as absconder.
- It may be mentioned herein that on 03.03.2018 the accused Md. Mohibul Hoque was arrested and remanded to judicial custody. Subsequently, vide order dated 07.03.2018, the accused was allowed to go on bail.
- 4. On completion of investigation, charge sheet was laid before this Court. After compelling attendance of accused, vide order dated 16.03.2018, charges u/s 354(A) IPC r/w Section 12 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty. During trial, prosecution has examined as many as seven witnesses including the Medical officer and the Investigating Officer.
- **5.** Upon completion of prosecution evidence, the accused was examined u/s 313 Cr.P.C. The accused declined to adduce defence witness when he was called upon to do so. The defence case is of total denial and false implications.
- I have gone through the record. Heard Mr. A. Kalam, learned special public prosecutor appearing for the State and Mr. N. U. Ahmed, learned defence counsel for the accused person.

#### **POINTS FOR DETERMINATION ARE:**

- **7.** (i) What was the age of the victim on 31.08.2013 i.e. the date of the alleged occurrence?
  - (ii) Whether on 31.08.2013 the victim was subjected to sexual assault/hurrasment by the accused?

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(iii) Whether on 31.08.2013 the accused committed sexual harassment and thereby made himself liable for punishment under Section 354(A) I.P.C.?

## **DISCUSSION, DECISION AND REASONS THEREOF**

8. PW-1, Md. Azizul Hoque, the informant of this case and father of the victim, in his evidence deposed that at the time of occurrence of this case, his daughter was 12 years old. She was studying in Class- VI. On 31.08.2013 at about 3 PM, his daughter went to the house of accused for taking tuition and after coming back from tuition, he found her crying. On asking, she told him that when she was taking tuition, the accused closed the door of the room, wanted to see her breast and also pressed her breast. On this, she started crying out of fear. The accused also asked her not to tell the incident to her parents and after taking promise by touching her books and assurance that she will come to tuition again, accused released her by kissing on her cheek. From the next day of occurrence, his daughter stopped going to tuition. After coming to know about the incident, he informed their villagers and Teacher's Association about the incident. A village meeting was also held in this regard but he did not get any proper response. Then, he lodged the case. Due to village meeting, a little delay occurred in lodging the case. Ext. 1 is his ejahar. Ext. 1(1) is his signature. In cross-examination, PW- 1 stated that he did not know as to whether the accused had any love affair with his daughter. His wife had asked him regarding the marriage of his daughter with the accused, but he had refused. The accused had a quarrel with his daughter, but he does not know as to whether the said guarrel was due to reason of the accused wanting to marry other girl. His daughter, used to attend tuition in a group of seven students. The accused used to take tuitions of other group also. He had lodged the instant case about 16 days after the incident. He had given a village meeting with regard to the incident, but he does not get adequate response from such meeting. In the said meeting, he had proposed for marriage of his daughter with the accused. He denied the defence suggestions that he has

deposed falsely about misbehave and molestation/sexual assault on his daughter by the accused.

PW-2, the victim in her evidence deposed that at the time of incident, she was a student of Class-VI and accused was her Science tutor. She used to go to the house of accused for attending tuition class at about 3 PM. On 31.08.2013 at about 3 PM, she went to the house of accused to attend the tuition class. As soon as, she entered into his room to attend tuition class, the accused closed the door of the room from inside and asked her to show her chest by removing her clothes. Thereafter, the accused forcefully pressed her chest. Thereafter, the accused made her to swear by touching her science books not to tell the incident to her parents. After taking promise for coming to tuition on the next day, and after kissing her, accused released her from his house. She came back to her house by crying. She reported the incident to her parents. Her father informed the incident to their villagers for justice. However, when her father did not get any response from the villagers in this regard then he lodged the case before Police Station. Police asked her about the incident. She was also produced before the Magistrate for recording her statement she stated the same incident earlier before the Magistrate. Ext. 2 is her said statement. Ext. 2(1) is her signature. In cross-examination, the victim stated that the accused had a love affair with another girl and he had promised to marry her. She also had love affair with the accused and she wanted to get married to him. Accused did not want to marry her. Over this matter, there was quarrel between them and she had told her parents regarding this matter. Her parents had wanted to give her marriage to the accused. Her father had lodged the instant case, one or two days after the occurrence. The village bichar was not held as some marriage related issues were proposed. When she used to go for her tuitions, some three four students also used to go with her on the way. They stay nearby and from time to time, they used to go for tuitions together. The accused used to undertake tuitions with other students also. Students attend tuition before and after their tuition. Students group wait for their turn in the tuition. The room in which the accused used to take tuitions is located

about 25 feet away from the house in which used to stay. People used to stay in that house. The doors and windows of the tuition room are usually kept open. On the day of the incident, his colleague student came at about 3.30 p.m. through their tuition class begins at 3 PM. She admitted that the accused did not touch her body. She denied that her father lodged false case as the accused did not marry her.

- **10.** PW-3, Afikon Nessa in her evidence deposed that she had heard that the accused had a love affair with the victim and wanted to bring the girl, but the same was opposed by her family and that there was a quarrel over this. The defence declined to cross-examine her.
- PW-4, Samsun Nehar, mother of the victim in her evidence that presently victim is aged about 16 years. The victim was taking tuitions with the accused and she had told her that she developed a love affair with the accused and he wanted to marry her, but they had not agreed to this. Over this issue, there was quarrel between both the sides. Subsequently, on anger her husband lodged the instant case against the accused. The defence declined to cross-examine her.
- PW-5, Abdul Manan Choudhury in his evidence deposed that about four-five years back he heard that the accused had love affair with the victim, but as her age was less, she was not given marriage to him. The defence declined to cross-examine him.
- 13. PW-6, Dr. Rekha Bhuyan in her evidence deposed that on 17.09.2013, she examined the victim in connection with Mikirbheta PS case No. 204/2013, who came to her with history of sexual assault upon her by a teacher. Upon examination, she opined that at the time of examination her age was between 14 15 years. There was no sign of injury on her private parts. She exhibited the Medical Report vide Ext. 3. In cross-examination, the Medical Officer stated that with regard to the age indicated of 14 15 years, there could be a margin of 1 2 years on either side.

- 14. PW-7, Shri Sanjib Saikia, the Investigating Officer in his evidence deposed that during investigation of Mikibheta PS Case No. 204/2013, he went to the place of occurrence, inspected the same, drew a sketch map (Ext. 4) and examined witnesses. He forwarded the alleged victim for medical examination and thereafter also forwarded her to the court for recording her statement before the Magistrate. Upon completion of investigation, upon finding sufficient materials, he submitted charge sheet against the accused u/s 354(A) IPC r/w Section 12 of the POCSO Act, indicating him as absconder, as he could not find him during the investigation. Ext.5 is the charge-sheet and Ext. 5(1) is his signature thereon. In his cross-examination, he stated that, there was no explanation about the delay of 16 days in the lodging of the ejahar. He has not examined any colleague student of the victim with regard to the incident.
- **15.** Basing on the above evidence on record, let me decide the points formulated.
- 16. Point No. I: So far, the age of the victim is concerned, PW-1, father of the victim, in his evidence claims that at the time of the incident, his daughter was aged about 12 years and a student of Class VI. The victim deposing in the year 2018 claimed her age as 16 years. This is a incident of 2013. She also stated that she was a student of Class VI. PW-4, the mother of the victim in her evidence stated that at the time of incident the victim was aged about 13 years. PW-6, the Medical Officer basing of Radiological Report has opined that the age of the victim was between 14 to 15 years. This part of evidence regarding age of the victim remained unchallenged from defence. As such, I hold that on the date of incident, the victim was above 12 years but below 18 years.
- **17. Point No. II & III:** So far the role of the accused is concerned, from the evidence of the victim, it appears that on 31.08.2013 at 3 p.m. when she entered into the tuition classroom, the accused closed the door from inside, touched her breasts and thereafter kissed her and by taking a promise to come back again, he let off her. On returning home she informed the matter to her

parents. In her cross she stated that she had love affair with the accused and wanted to marry him but the accused refused. On this matter there was a guarrel between them. She further admitted that 3 - 4 other students also used to go with her for taking tuition and the accused used to take tuition with other students also. In her cross she specifically admitted on the alleged incident accused did not touched her body. PW-4, the mother of the victim to whom the victim has reported the matter of sexual assault by the accused, however did not support the victim on the allegations of sexual assault and rather she simply stated that the victim told her that she developed love affair with the accused and wanted to marry him and over this matter there was a guarrel between them. She specifically admitted that out of anger, her husband lodged this case. She is totally silent regarding any incident of sexual assault reported to her by her daughter. PW-1, the father of the victim though in his examination-in-chief corroborated the evidence of the victim so far sexual assault on her is concerned, but in his cross, he admitted that there was a guarrel between his daughter and the accused and that his wife asked him regarding the marriage of his daughter with the accused. He denied to have deposed falsely against the accused. PW-3 and 5 have confirmed the love affair of the victim and the accused. PW-6, though stated regarding recording the history of sexual assault by the teacher from the victim but the victim contradicted herself on main points. PW-7 is the Investigating Officer of this case who did routine investigation. In his 313 Cr.P.C. examination, the accused denied the allegations and took the stand of false implication for his denial to marry the victim.

18. From the above discussions, it appears that the evidence of the victim regarding sexual assault was not supported by her mother and the victim also contradicted herself during cross-examination by admitting that accused did not touch her body and thus her evidence is found not reliable and trustworthy so far the allegations of sexual assault on her/molestation by the accused. The other aspect to create doubt on the prosecution version is delay of 15-16 days in filing the FIR.

- **19.** From the above discussion, I am of the opinion that in this case, prosecution has failed to prove the primary facts and in view of this, provisions of Section 29 of POCSO Act cannot be applied in this case.
- **20.** Considering all above, I hold that prosecution has failed to prove the ingredients of charges against the accused Md. Mohibul Hoque beyond reasonable doubt and as such, he is acquitted from the charges u/s 354-A IPC r/w Section 12 of the POCSO Act, 2012 and set at liberty forthwith.
- **21.** Bail bond executed by the accused and his surety are extended for another six months from today U/S 437-A Cr.P.C.
- **22.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357-A Cr.P.C.
- 23. Send a copy of the judgment to learned District Magistrate, Morigaon U/S 365 Cr.P.C.
- **24.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the,  $18^{th}$  day of February, 2020.

Special Judge, Morigaon:

## **APPENDIX**

## 1. Prosecution witnesses:

- P.W.1 Md. Azizul Hoque.
- P.W.2 Victim 'A'.
- P.W.3 Ms. Afikon Nessa.
- P.W. 4 Ms. Samsun Nehar.
- P.W. 5 Sh. Abdul Manan Choudhury. P.W. 6 - Dr. Rekha Bhuyan. (M/O)
- P.W. 7 Sh. Sanjib Saikia. (I/O)
- **2. <u>Defence witnesses</u>** None
- **3. Court witnesses** None

## 4. Exhibits by prosecution:

- Exbt. 1 Ejahar.
- Exbt. 2 164 Cr.P.C. statement of the victim.
- Exbt. 3 Medical Report.
- Exbt. 4 Sketch Map.
- Exbt. 5 Charge sheet.

Special Judge, Morigaon