DISTRICT: DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri T. Kalita,

Special Judge, Dhubri

Special Case No. 08 OF 2018

<u>U/S 354-B IPC, Read with section 8 of POCSO Act.</u> Corresponding to G.R. Case No.**735/2017**

State of AssamComplainant

Versus

Abu Bakkar Siddique @ Bakkar S/O-Shobuz Uddin Ahmed Vill-Hazirhat P.S.-Sukchar

District-South Salmara Mankachar Accused person

Charge framed on : 01-03-2019

Evidence recorded on : 20-03-2019, 30-05-2019

05-09-2019, 25-02-2020

Argument heard on : 06-03-2020

Judgment delivered on : 06-03-2020

Advocates who appeared in this case

Shri U.K. Sarkar, Special P.P. for the Prosecution Shri Aminul Islam, Advocate for the Defence

JUDGMENT

1. The genesis of the story of the prosecution has revealed in a complaint filed by one Rahul Amin on 20-02-2017, addressed to the In-charge of B.N. College T.O.P., Dhubri that his sister Nirbhaya (The actual name is withheld considering the nature of the case), aged about 16 years old, while was going away for nature's call at the toilet of Dhubri Law College, where H.S.L.C. examination was going on, then the accused secretly appeared in the urinal and caught hold her from her backside with a view to outrage her modesty. However, she started raising alarm and the examiner and staffs appeared at the place of occurrence and caught hold the accused, but the accused fled away from the college campus taking advantage of the authority while meddling the matter.

- 2. Police accordingly registered the case being Dhubri P.S. Case No. 170/2017 and after having completed the investigation, laid charge-sheet against the accused Abu Bakkar Siddique @ Bakkar to stand trial u/s 354-B IPC, read with section 8 of POCSO Act.
- **3.** The accused was furnished with necessary copies and after having heard both the parties, formal charge u/s 354-B IPC, read with section 8 of POCSO Act were framed, read over and explained to him to which he pleaded not guilty and claimed for trial.
- **4.** During trial, the prosecution has examined as many as seven numbers of witnesses. The statement of the accused was recorded u/s 313 Cr.P.C. But his plea is denial; however, the accused adduced none.
- **5.** I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following point for determination:

Whether the accused entered into the urinal attached to the Dhubri Law College, Centre of H.S.L.C. examination, with a view to outrage the modesty of the victim on 20-02-2017 and tried to sexually assault her and thereby committed an offence punishable u/s 354-B IPC, read with section 8 of POCSO Act, 2012?

DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS

- **6.** Now, let me discuss the evidences on record to see how far the prosecution has been found able to prove the case against the accused person beyond all reasonable doubt.
- **7.** PW-1 is the informant Ruhul Amin, who is the brother of the victim Nirbhaya. According to him, in the year 2017, his sister Nirbhaya was a candidate of H.S.L.C. examination and she told him that during examination, she went to toilet for nature's call and at that time one boy entered into the toilet room. However, he came to know that the boy was Abu Bakkar Siddique. However, his sister did not state anything to him as to what had happened inside the toilet. Accordingly he has

filed the FIR vide Ext-1, Ext-1(1) is his signature. He, however, stated that the scribe did not read over the contents of the ejahar to him.

- **8.** PW-2 is the victim Nirbhaya herself. According to her, in the year 2017, she was a candidate of H.S.L.C. examination which was held at Dhubri Law College. She went to the toilet room and at that time a boy entered into the toilet room. Accordingly, she has informed about the incident to the teachers and her brother has lodged the ejahar. Her statement was recorded by a Magistrate vide Ext-2, Ext-2(1) is her signature.
- **9.** PW-3 is one Ranju Bibi, the mother of the victim Nirbhaya. She too stated that her daughter had been to Dhubri Law College, the Centre of H.S.L.C. examination for appearing in the examination and went to toilet. But one boy entered into the toilet. However, her daughter did not tell about the accident to her, but told her that the accused did not misbehave her.
- **10.** PW-4 is one Ani Ahmed. He stated that his sister did not tell him as to what had happened, but stated that the person did not misbehave her.
- **11.** PW-5 is one Jamal Uddin Ahmed, who was working as Principal of Bidyapara Boys H.S.L.C. School, Dhubri. He stated that on the day of occurrence, H.S.L.C. examination was going on and the victim Nirbhaya went to the urinal and after that she complained that one inmate of Law College Hostel was at urinal who is not a good boy. Accordingly, the boy was confined in the school and was produced before the Principal of the Law College. However, he did not interrogate the boy. The boy was kept in a room. He had not seen the boy on the day of accident. However, he knows the boy as Abu Bakkar Siddique. He further stated that there is no official communication about incident.
- **12.** PW-6 is one Jahangir Hussain Mollah. He was invigilator of the examination hall and heard that a student belongs to his school was being sexually assaulted by somebody. However, he does not have any personal knowledge about the occurrence.
- **13.** PW-7 is one Kamal Ch. Das, who was also working as AOC at Law College Dhubri. He stated that an occurrence took place at Law College, Dhubri where the

examination of H.S.L.C. was going on. However, he was informed by a 4th Grade staff that a girl candidate complained to the invigilator against a particular boy who is bad in character. However, he found the girl to have been writing her examination in a very peaceful manner and submitted her answer script after the exam is over. However, he has not personally enquired the matter from the girl. He knows the victim. Moreover, he was not informed all about the occurrence.

- 14. So, these much evidences are found available on record. The evidences as it appears from the prosecution witnesses go to show that H.S.L.C. examination was going on in at Dhubri Law College Centre. The victim Nirbhaya was a candidate of H.S.L.C. examination and while the examination was going on, she came out for nature's call to the urinal. But an unknown boy was found in present in the urinal who was not found to have born a moral character. The evidence of PW-2, the Nirbhaya, upon perusal goes to show that at about 11:30 a.m. she went to toilet room for nature's call. The lock of door of the toilet was not properly locked. Suddenly, a boy entered into the toilet. But she stated nothing as to what was done by the accused and whether she was caught hold by the accused who entered into the urinal or used force to outrage her modesty, rather she stated that suddenly a boy entered into the toilet since the lock of the door was not properly locked. Admittedly, none has seen the accident and as such the evidences as it appears from the PW-2 palpably go to show that no occurrence of assault took place wherein the question of outrage the modesty of the girl would be attracted. Upon perusal of the evidence of PW-2, it appears that the lock of the door of the toilet was not properly locked and suddenly a boy entered into the room goes to show that the boy might have visited the urinal for his nature's call and it is nothing on record to show that the urinal is meant for female only. He might have mistakenly entered into the family ward of urinal. But, there is nothing on record to show that the urinal which was used by the victim was a female urinal and she was encountered with the accused inside the urinal at any point of time. So, the prosecution failed to prove the intent and motive of the accused as to what for he was entering in the urinal.
- **15.** So, the allegation as leveled against the accused person that he has committed an offence u/s 354-B IPC, read with section 8 of POCSO Act has got no

leg to stand and as such the accused Abu Bakkar Siddique @ Bakkar is acquitted from the purview of charge u/s 354-B IPC, read with section 8 of POCSO Act beyond all reasonable doubt by setting him at liberty forthwith.

- **16.** Having considered the facts and circumstances of the case, I do not like to recommend the DLSA for awarding any compensation to the victim u/s 357(A) Cr.P.C.
- **17.** The Bail Bond so furnished by the bailor stand cancelled.
- **18.** Signed, sealed and delivered in the open Court on this the 6th day of March, 2020, at Dhubri.

(T. Kalita) Special Judge, Dhubri

Dictated & corrected by me.

(T. Kalita) Special judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Ruhul Amin (Complainant)

PW-2 Victim Nirbhaya

PW-3 Ranju Bibi

PW-4 Ani Ahmed

PW-5 Jamal Uddin Ahmed

PW-6 Jahangir Hussain Mollah

PW-7 Kamal Ch. Das

2. PROSECUTION EXHIBIT:

Exhibit-1 Ejahar

Exhibit-2 Statement of the victim recorded u/s 164 Cr.P.C.

(T. Kalita) Special Judge, Dhubri