

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
 Special Judge,
 Dhemaji,

JUDGMENT IN SPECIAL (POCSO) CASE NO. 06(DH)/2017.

(G.R. Case No.953/2016, Dhemaji P.S. Case No.380/2016 Under Section 366(A)/511 of the Indian Penal Code R/W Sec. 8 of POCSO Act)

The State of Assam

- Versus -

Shri Maniram DasAccused Person
 S/O Lt. Ananda Das,
 R/O VIII- Pachali Kochgaon,
 P.S. Dhemaji,
 Dist.- Dhemaji.

Committing Magistrate:- Shri P.C. Kalita,
 Chief Judicial Magistrate,
 Dhemaji.

Appearance:

Shri A. Fogla,
 Public ProsecutorFor the State
Shri Pranjal Pratim Neog, Advocate ,For the Accused

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**Dates of prosecution evidence : 09.05.2017, 01.08.2017,
30.08.2017, 24.10.2017,
02.01.2018**

Date of arguments : 13-03-2018

Date of Judgment : 26-03-2018.

JUDGMENT

1. Prosecution case in a nutshell is that on 31.10.2016 complainant Jadab Mondal lodged a written complaint with Dhemaji P.S. alleging inter alia that on the same date at about 6 A.M. while his daughter Miss Titu (real name conceal) aged about 11 years was returning home from daily market accused Moniram Das attempted to kidnap her from the road at Jamaguri Pachali. The local people apprehended the accused and handed over to the police.
2. On receipt of the ejahar police registered a case vide Dhemaji P.S. Case No.380/2016 U/s. 366(A)/511 of I.P.C read with Section 8 of POCSO Act. Police also started investigation and on completion of investigation submitted Charge-sheet against the accused- Moniram Das u/s 366(A)/511 of I.P.C read with Section 8 of Act.
3. The case came up before the learned J.M.F.C., Dhemaji. Process issued for appearance of the accused and on appearance of the accused learned J.M.F.C. Dhemaji furnished necessary copies to the accused and committed the case to this Court for trial.
4. On receipt of record and on appearance of the accused this Court considered the materials on record and upon hearing both sides framed charge U/s. 8 of POCSO Act and read over and explained to the accused to which he pleaded not guilty.

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5. Prosecution in order to prove its case examined 7 witnesses in all. Accused is examined u/s 313 Cr.PC. Defence case was of total denial. Defence adduce no evidence whatsoever.

6. Points for determination :

That you, on 31.10.2016 at 6 AM at near Balisor Joypur Daily Market under Dhemaji Police Station committed sexual assault upon Miss Nilima Borsaikia a minor by touching her breast and private parts and thereby committed an offence punishable U/s.8 of POCSO Act, 2012.

7. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof :

8. PW1 is the victim. She stated that she is aged about 11 years. Hence she was examined without oath. Before examination this Court tested her capacity to understand by putting some questions to the victim. After being satisfied the Court recorded her statement without oath. The victim stated that accused Moniram Das was known to her. On the date of occurrence she had gone to watch 'Bhawna' organized during 'Kali Puja'. At night she stayed in the house of her uncle Sahdev Mondal. Next day while she was coming back home accused Moniram Das met her on road and said that he would drop her. Initially, he refused to go with him but he forcibly took her on his bike and brought to his house. She also stated that the accused made her sit on a chair. Thereafter he touched her cheek and breast. Then the people of his locality and the family members came there and one of them gave her beating and she was made to kneel down. They also threatened to take her to the police station. The public caught them and brought before the police. She was medically examined and she gave statement before the Magistrate. Ext.1 is her statement U/s. 164 of Cr.P.C. Ext.1(1) is her signature.

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In cross-examination PW1 denied that she did not state before the police that the accused did not do bad thing with her. She also stated that one lady in the house of the accused took her to the police station. She denied that a false case has been filed against him.

9. PW2 is Jaydev Mandal, father of the victim. He deposed that the occurrence took place during 'Kali Puja'. At the relevant time his daughter stayed in the house of elder her brother. Further has stated that while she was returning home in the next morning the accused grabbed her from behind and took away on his bicycle. He took her to Pachali and there people caught them. One person named Dharma asked him if his daughter was missing he contacted his elder brother who told him that his daughter had left his house. He went to Pachali. There he found a crowd of people and also saw the accused and his daughter in midst of the crowd. One Arun Mandal informed the police and police apprehended them. Then he filed a complaint. He also stated that at the time of occurrence his daughter was reading in Class-VII, she was aged about 11 years.

In cross-examination he stated that he does not know the name of the person against who he filed this case. He denied the defence suggestion that daughter had gone to the house of the accused of her own accord.

10. PW3 is Muktia Ariya. His evidence is that the occurrence took place about one year back. On the date of occurrence at about 8 P.M. he went to a nearby shop to buy some articles. While returning back he saw a big crowd at Pachali. He stopped there and he saw the accused and the victim. The people asked him whether he knew the victim to which he replied in the affirmative. Then he made phone call to her father. Police was informed and the victim and accused were brought to the police station. The people at Pachali apprehended the victim and the accused.

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In cross he stated that the complainant is not related to him.

11. PW4 Sauhan Mandal has deposed that the complainant is his uncle and victim is his cousin. The occurrence took place about one year back. His uncle told him that his daughter was kidnapped from the 'Kali Puja' ground and the local people apprehended the accused and the victim.

12. PW5 Arun Mandal stated that the occurrence took place about one year back. On the date of occurrence in the morning while he came to Dhemaji he saw a big crowd at Pachali. He came near the people and found the accused and the victim detained by the people. He informed the complainant about the incident. On being asked the victim told him that the accused on the pretext of dropping at her house took her on his bicycle elsewhere.

In cross he denied defence suggestion that the victim did not tell him about the incident.

13. PW6 Dr. Debajit Doloi state that on 31.10.2016 at around 1.50 PM he was at Dhemaji Civil Hospital as M&H.O-I. On that day he has examined a girl aged about 11 years named Miss Miss Titu, in reference to requisition from Dhemaji PS, Dhemaji escorted and identified by WHG Riva Baruah of Dhemaji PS. On examination he has not found any injury on the body surface of Miss Miss Titu.

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Opinion –in his opinion Miss Miss Titu is both physically fit and mentally is normal. He has not found any injury mark (both recent and old) on her body surface and she was disposed.

14. PW7 Md. Idrish Ali stated that on 31.10.2016 he was posted at Dhemaji PS as Attach Officer. On that day one unknown person informed OC Dhemaji over telephone that one minor girl and a boy were apprehended at Jamaguri Pachali under Dhemaji PS. Accordingly GD Entry

was made in the Police Station vide No. 1131 dated 31.10.2016. He took up preliminary investigation as per instruction/endorsement by OC Dhemaji PS. Accordingly, he went to Jamaguri Pachali and he found the body and the girl being apprehended by local people. The boy and the girl were introduced as Maniram Das and Smt. Miss Titu respectively. He took the boy and the girl in custody and brought them to police station. He got the victim girl medically examined. The father of the victim lodged a written complaint in the police station. Accordingly, a case was registered vide Dhemaji PS Case No. 380/16 U/s. 366(A)/511 IPC R/W Section 8 of POCSO Act. He was entrusted to take up the investigation of the case. Accordingly, he recorded statement of complainant and the victim. He also visited the place of occurrence and prepared a sketch map, recorded the statement of witnesses U/s. 161 of Cr.P.C. The victim was given in jumma of her father Jaydev Mandal. The accused was formally arrested and forwarded to judicial custody. He also had the statement of victim U/s. 164 of Cr.P.C. recorded before Magistrate. He collected Medical Report and statement U/s. 164 Cr.P.C. On completion of investigation he submitted charge sheet against the accused Maniram Das U/s. 366(A)/511 IPC R/W Section 8 of POCSO Act. Ext.2 is ejahar and Ext.2(2) signature of O/C Lambit Gogoi which he knows. Ext.4 is the relevant G.D. Entry in the diary. Ext.5 is sketch map. Ext.5(1) is his signature. Ext.6 is charge sheet. Ext. 6(1) is his signature.

APPRECIATION OF EVIDENCE :

15. From the discussions of evidence on record, it appears that all the PWs including the victim stated that the victim was found in company of the accused and the people of a particular locality apprehended them. The victim PW1 has specifically stated in her evidence that the accused forcibly kidnapped her from the road and took her to his house and physically abused her by touching her cheek and breast. PW1, the victim, who was also produced before the Magistrate gave her statement before the Magistrate U/s. 164 Cr.P.C. In her statement 164

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Cr.P.C. also she stated that she knew the accused and also stated that on the date of occurrence at about 6 AM while she was coming home from her uncle's house on the road the accused grabbed her and forcibly took her away on his cycle. She also stated that the accused took her to his house and he touched her breast and cheek. The victim was also medically examined. The I.O (PW7) testified that the victim and the accused was apprehended by the local people at Pachali.

16. I have scrutinized the evidence on record very carefully. It reveals from the record that the 'ejahar' was lodged on the date of occurrence itself. I have also looked into the evidence of PWs in cross-examination part. I find that the victim is cross-examined by the defence. She denied defence suggestion that the accused did not abuse her physically. So far other PWs are concerned, nothing useful has been elicited from them by the defence. I find the evidence of the PWs consistent, convincing and reliable. It is a case of sexual assault and the victim is minor and the victim has also given statement both in initial stage and during trial in natural way and I find nothing to disbelieve her testimony.

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While arguing the case before me on behalf of he accused the learned counsel for the accused submitted that there are contradiction and discrepancy in the evidence of the PWs and also contended that the testimony of the victim who is minor cannot be acted upon without any eye witnesses corroboration. However in the facts and circumstances of the case, I find it difficult to accept the submission made by the defence counsel, as the evidence of the victim is found to be consistent and convincing.

17. *It is well settled that the testimony of victim of sexual assault has to be weighed with utmost care and sensitivity. It is also well settled that the conviction can be based solely on the testimony of the prosecutrix or victim, if it inspires confidence.*

18. Before I give my finding let me see whether the evidence on record constitute offence of sexual assault as defined U/s. 7 of POCSO Act.

Section 7 sexual assault – Whoever, with sexual intent touches the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

In the instant case I have thread bare discussed the evidence and also the circumstances brought on record by prosecution side. I have also gone through provisions of Section 7 which is defines sexual assault. Taking into consideration the entire fact materials I find that prosecution has been able to bring on record ample evidence to prove the charge against the accused.

19. In view of the above discussion, I find that the prosecution has not been able to prove the charge of sexual assault punishable U/s. 8 of POCSO Act against the accused beyond all reasonable doubt.

O R D E R :

20. In the result, I find the accused Maniram Das guilty U/s. 8 of POCSO Act. Accordingly, he is convicted thereunder.

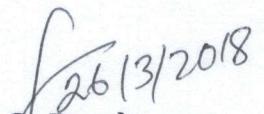
21. Heard the accused person on the point of charge **u/s. 235(2) of Cr.P.C.**

22. The accused pleaded for mercy.

23. Considering all the facts and circumstances and the nature of the offence I am inclined to award the accused minimum sentence of 3 (three) years and fine. Accordingly, the accused is sentenced to undergo R.I. for 3 (three) years and to pay a fine of Rs.1,000/- (one thousand) in default to undergo R.I. for another 1 (one) month.

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24. Set-off of the period of detention.
25. As regards, compensation **U/s. 357(A) Cr.P.C.** I find that it is not a fit case to grant compensation to the victim.
26. A copy of judgment free of cost be given to the accused person.
27. Judgment is pronounced in open Court.
28. Given under my hand and seal of this Court on this the **26th** day of March, 2018.


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Appendix:

Prosecution Witnesses

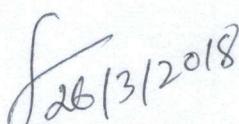
- P.W. 1 - Miss Titu (real name conceal).
- P.W. 2 - Jaydev Mandal
- P.W. 3 - Muktia Ariya
- P.W. 4 - Sauhan Mandal
- P.W. 5 - Arun Mandal
- P.W. 6 - Dr. Debajit Doloi
- PW- 7 - Md. Idrish Ali, I/O.

Defence Witnesses:-None.

Prosecution Exhibits

- Exhibit-1 - statement of victim U/s. 164 of Cr.P.C
- Exhibit 1(1) - signature of victim
- Exhibit 2 - Ejahar.
- Exhibit 2(1) - Signature of Jaydev Mondol
- Exhibit 2(2) - Signature of O/C Lambit Gogoi.
- Exhibit 3 - Medical Report,
- Exhibit 3(1) - Signature of Dr. Debajit Doloi,
- Exhibit-4 - G.D. Entry
- Exhibit-5 - Sketch map
- Exhibit-5 (1) - Signature of Idrish Ali, I/O.
- Exhibit 6 - Charge sheet.
- Exhibit 6(1) - Signature of Idrish Ali, I/O,

Defence Exhibits :- None.


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~~Special Judge~~,
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