# IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

# Sessions Case No. 102/2015

(Under Section 12 of the POCSO Act )

Present: S.P. Moitra,

Sessions Judge

Kamrup(M), Guwahati

#### **State of Assam**

- Vs -

## Sri Rajesh Singh @ Bablu

.....Accused

## **Appearance for the Parties:**

Advocate for the State : Mr. H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Mr. C.K.Nath, Learned Advocates

Date of recording evidence : 14.09.2015, 13.10.2015 & 24.05.2017

Date of Argument : 03.08.2017

Date of Judgment : 17.08.2017

## J U D G M E N T

1. Brief facts of the case of the prosecution, as emerged from the written FIR (Ext-1) lodged by the informant (name withheld), are that on 27.03.2014, at about 2:20 a.m., while the informant was sleeping in her room, the accused person entered into the room, by opening the back door. He lifted the mosquito net and thereafter caught hold of her hand. As the informant

raised alarm, the accused person tried to flee from the back door and the elder brother of the informant obstructed him from fleeing from the place.

- 2. On the basis of the said FIR (Exhibit 1), Latasil PS Case No. 89/14 was registered U/S 448/354 of the IPC, read with Section 12 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as "POCSO Act") and was taken up for investigation. In course of investigation, I.O. visited the place of occurrence, prepared the sketch map of the place of occurrence and also recorded the statements of the witnesses. The statement of the victim was also recorded under Section 164 of Cr.P.C. before the learned SDJM (I), Kamrup(M), Guwahati. After completion of the investigation, the I/O submitted charge-sheet against the accused person U/S 448/354 of the IPC, read with Section 12 of the POCSO Act.
- 3. Cognizance of the offence was taken under the aforesaid sections of law. The accused person who was on bail entered appearance before this Court and he was allowed to remain on previous bail. The copies of the relevant documents were furnished to the accused in compliance to the provision of section 207 of the Cr.PC. On consideration of charge, charge U/S 448/354 of IPC read with Section 12 of POCSO Act was framed against the accused; charge was read over and explained to the accused to which he pleaded not guilty and claimed to face the trial.
- **4.** To bring home the charge, prosecution examined, as many as, 6 (Six) witnesses on its behalf and also exhibited five documents. Defense plea was of complete denial of any guilt, as appears from the trend of cross-examination, as well as, from the statement of the accused, recorded U/S 313 of the Cr.P.C.. The defence adduced no evidence on its behalf.
- **5.** I heard the argument advanced by the learned counsel for the parties.

#### 6. Point for determination:

(i) Whether on 27.03.2014, at about 2:20 a.m., at Uzanbazar Jahajghat, the accused person committed house trespass by

- entering into the room of the victim and used criminal force on her with the intention to outrage her modesty.
- (ii) If so, whether he is also guilty in committing the offence under Section 12 of POCSO Act, 2012, by assaulting the minor informant/victim?

### **Decision and reasons thereof:**

**7.** I have gone carefully through the entire evidence on record both oral and documentary. For the sake of convenience and brevity the evidence of the offence on both the points are taken up altogether for discussion and decisions.

PW1 is the victim herself and her testimony reveals that the occurrence took place in the previous year, in the month of March. She testified that on that particular night, she was sleeping with her grand mother Smti. Seba Das. She testified that at about 2:30/3:00 a.m., whe went to toilet and when she came back and was getting inside the bed, she saw a shadow of a man and on seeing the same, she became afraid and raised alarm. She added that hearing her alarm, her elder brother Sri Subhash Das came out and apprehended the accused person near the gate. She also stated that the accused person touched the mosquito net. Her further evidence is that she lodged the FIR at Latasil P.S. and her statement was also recorded by the learned Magistrate. She proved Ext-3 as her statement.

During cross examination, the witness admitted that police did not ask her any proof, as to her present age. She further denied the suggestion that the accused person did not do anything, nor he had entered into the house. However, she admitted that her elder brother apprehended the accused person from the road. She further admitted that her elder brother Subhash Das is a mentally ill person and he used to remain inside in the house all through the day. She further added that he has been suffering mental illness from more than a year.

**8.** PW2 Smti. Seba Das is the grand mother of the victim. She testified that the accused person is the neighbour and added that about one year ago,

one day, she herself along with the victim were sleeping and then the victim heard a sound of the knocking the door and hearing the same, she herself along with the victim and Subhas Das came out to the road. She specifically stated that the accused person never held the hand of the victim, nor touched her. Thus, this witness fully contradicted the story narrated in the FIR and also contradicted the evidence of the victim herself. She gave a complete different version of the occurrence and specifically stated that case was filed out of misunderstanding and they are not interested to proceed with the case.

- **9.** PW3 Mrs. Sangita Surin and PW4 Sri Manoj Pd. Upadhyay are the neighbouring witnesses and they specifically stated that they know nothing about the occurrence.
- **10.** PW5 Sri Subhash Das is the person who allegedly apprehended the accused person. His testimony reveals that the occurrence took place at about 1:30 a.m. and at that time, he was at home. He testified that the accused person came to their house in intoxicated condition and he was peeping through the window, in their house. He further added that he came out from their house and asked him as to why he was peeping, but the accused person could not give any satisfactory reply. This witness stated that hence he assaulted him and handed over him to the police.
- **11.** Thus, this witness gave another twist to the story narrated in the FIR and gave a complete different version in comparison to the testimony of PW1 and PW2.
- **12**. PW6 SI Nurul Islam Ahmed is the Investigating Officer of the case and he is a formal witness only.
- **13.** In view of the entire evidence on record, I find that the prosecution has miserably failed to prove his case. There is no corroboration to the facts that the accused person had entered into the room of the informant/victim and caught hold of her hand with intention to outrage her modesty. The age of the victim was also not proved.

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14. In result accused Sri Rajesh Singh @ Bablu is held not guilty of

offence punishable u/s 448/354 of IPC, read with Section 12 of the POCSO

Act and he is accordingly acquitted and set at liberty forthwith. Bail Bond

furnished on his behalf, will remain in force for the next six months.

**15.** Signed, sealed and delivered in the open court on this 17<sup>th</sup> day of

August, 2017 at Guwahati.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)

Sessions Judge,

Kamrup(M), Guwahati

# **APENDIX**

(A) **Prosecution Exhibits** :

Ext-1: FIR

Ext-2: Printed form of FIR.

Ext-3 : The statement of the victim recorded under Section 164 of

Cr.P.C.

Ext-4 : Sketch Map. Ext-5 : Charge sheet

(B) **Defense Exhibit** : Nil

(C) <u>Court Exhibit</u> : Nil

(E) **Prosecution Witnesses**:

PW-1: Ms. Nisa Das.

PW-2 : Smti. Seba Das

PW-3 : Mrs. Sangita Surin

PW4 : Sri Manoj Pd. Upadhyay

PW5 : Sri Subhash Ch. Das

PW6 : SI Nurul Islam Ahmed(I.O)

(F) **Defense Witnesses**: Nil

(G) <u>Court Witnesses</u> : Nil.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati