IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 57 of 2016, u/s 6 of POCSO Act 2012 and Section 451 IPC (Arising out of Nazira P.S. Case No. 234/2016)

State of Assam

-Vs-

Sri Haresh Nayak Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Ranjan Kalita, Advocate

Date of framing Charge : 20.01.2017

Dates of Evidence : 21.03.2017, 31.05.2017, 06.09.2017,

27.11.2017

 Date of S/D
 : 06.01.2018

 Date of Argument
 : 11.05.2018

 Date of Judgment
 : 25.05.2018

<u>JUDGMENT</u>

1. Prosecution case, in brief, is that on 06.12.2016, victim 'P' (name withheld) lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, that on 05.12.2016, at about 6 pm, while she was alone in her house and busy in her study, accused Haresh Nayak entered into the house and with an intention to outrage her modesty, touched her body and also dragged her by pulling her hair. On her hue and cry, her aunt Smt. Labanya Rajput and neighbouring people arrived there and apprehended the accused and kept him tied. It is also alleged that prior to this incident, accused used to follow her while she went to her school.

- 2. On receipt of the FIR, Nazira P.S. Case No. 234/2016, u/s 8 of POCSO Act 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court u/s 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused u/s 8 of POCSO Act, 2012.
- 3. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 20.01.2017, charges u/s 6 of POCSO Act, 2012 and Section 451 IPC has been framed against the above named accused person to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined seven witnesses including the victim and I.O. Defence cross examined the said P.Ws.
- 5. Upon completion of the prosecution evidence, accused was examined u/s 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.
- 6. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. Ranjan Kalita, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 7. (I) What was the age of the victim 'P' on the date of incident?
 - (II) Whether on 05.12.2016, at about 6.00 p.m., accused has committed house trespass by entering into the house of the victim 'P' in order to commit the offence of sexual assault upon the victim 'P'?
 - (III) Whether victim 'P' was subjected to penetrative sexual assault or she was subjected to sexual assault by the accused?

DECISION AND REASONS THEREOF:

8. PW-1 the victim 'P' in her evidence deposed that on 05.12.2016, at about 6 pm, while she was alone at her residence, accused Haresh Nayak entered into her house and grabbed her from back side. On this she cried. Her Aunty Labanya Rajput arrived there and saw the accused in harassing her. She Spl. (P) Case No. 57/2016 Page 2 of 10

also made hue and cry. Neighbouring people arrived there and apprehended the accused and kept him tied. VDP and ATSA party also arrived there. VDP secretary informed the matter to police. At about 7 pm police arrived there and took the accused with them. She reported the incident to her parents, aunty and others. On this incident, she lodged the FIR vide Exbt. 1. Police interrogated her. Police also took her for medical examination and brought to court where she gave her statement vide Exbt. 1. PW 1 further deposed that except holding her, accused did not commit any other misdeed. In her cross by defence, the victim admitted that FIR was lodged on the next day at police station at 11 am. Her residence is at distance of about ½ hours journey distance by vehicle. She has not mentioned the cause of delay in lodging the FIR. Prior to this incident, another case was lodged by her against accused Haresh Nayak for pulling cycle while she went to tuition. In that incident, accused was released from Police station. She denied that on 05.12.2016 they called the accused to their residence for settling the matter of cycle pulling case. She also denied that to send the accused to jail on getting annoyed by release of the accused from police station, they have cooked up this case. On their cry several other peoples from market and other residents of line arrived there. She cannot recognise the other persons arrived there. PW 1 stated that while giving statement in court, she has mentioned that she has assaulted the accused with slipper but did not mention the same in her FIR. She denied that accused used to visit their residence and maintains a cordial relation. Accused Haresh has one M/Cycle. She further denied that she used to ride with him in his m/cycle. She denied that on 05.12.2016, accused did not come to her residence and grabbed her and that she has deposed falsely.

9. PW-2 Smt. Labanya Rajput in her evidence deposed on 05.12.2016, at about 6 pm, while she returned home from market, on hearing hue and cry of victim 'P' at her residence, she went there and saw that accused Haresh Nayak is coming out of his residence. On asking victim, she told her that accused grabbed her from back side, on which, she tried to assault him by slipper. Local peoples apprehended the accused and kept him tied. Later on

VDP came there and called police. Police arrived there and took the accused with them. Police interrogated her. In her cross by defence PW 2 deposed that she saw the accused in coming out from one room. She has not seen him inside the room with victim 'P'. Some other peoples followed her. She cannot recognize the persons arrived there except Gopal Sing Rajput and Rajib Munda, who were of ATSA. Police arrived after some time. VDP Puneswar Kurmi also arrived there. PW 2 further deposed that prior to this incident, another case was lodged against accused Haresh Nayak for pulling cycle while victim 'P' went to tuition. In that case police did not arrest the accused. On this, they got offended. She denied that on 05.12.2016 they called the accused to their residence for settling the matter of cycle pulling case. She denied that to send the accused to jail, on getting annoyed due to non-arrest of the accused by Police, they have cooked up this case. She further stated that except asking her name, police did not ask her anything. Accused Haresh has one M/Cycle and he is known to her. She denied that on 05.12.2016, accused did not come to the residence of victim and grabbed her and that she has deposed falsely.

- 10. PW-3 Sri Puneswar Kurmi in his evidence deposed that on 05.12.2016, at about 6 pm, while he returnedg home from market, one Amardeep and some other boys informed him about incident between accused and victim 'P'. He went to the residence of victim and saw that accused Haresh Nayak was kept tide there. He has informed the matter to police. On asking the victim, she told him that while she was alone; accused pulled her from backside and tried to grab her. Local peoples apprehended the accused and kept him tied. Later on Police arrived there and took the accused with them. In his cross PW 3 deposed that residence of the victim 'P' is at line No. 8 whereas accused lives in Line No. 6. He has no knowledge of affair between the accused and the victim. He cannot say if family members of the victim desired to marry the victim with accused and denial by accused, they have filed this false case to pressurize the accused.
- 11. PW 4 Sri Ramesh Rajput, brother of the victim, in his evidence deposed that on 05.12.2016, at about 6 pm, while he was returning home from Spl. (P) Case No. 57/2016 Page 4 of 10

market, on hearing hue and cry and knowing that accused has entered into his house, he apprehend the accused and kept him tied. On asking the victim, she told him that while she was in the house, accused entered the house, pulled her and tried to grab her. Later on, Police arrived there and took the accused with them. His sister appeared in class X final exam. In his cross examination by defence PW 4 stated that he met with the accused on road while he came from market and kept him tied in courtyard. After this, he has asked his sister about the incident. Prior to this incident, he has lodged another FIR against accused Haresh Nayak and in that case accused was allowed to go on bail from Nazira PS. He cannot say if on 05.12.2016, Labanya Rajput invited accused to their house for discussing the earlier incident. He denied that to send the accused to jail, on getting annoyed due to non-arrest of the accused by Police, they have cooked up this case. He further denied that on 05.12.2016, accused did not come to his residence and grabbed his sister. His sister did not tell him exactly on which part of her body the accused grabbed her. He denied that he has falsely implicated the accused with this false case.

- 12. PW 5 Smt. Mukheswari Rajput in her evidence deposed that on 05.12.2016, at about 6 pm, while she returned home from office, on hearing hue and cry she went to the residence of victim and saw that accused Haresh Nayak was kept tide there. On asking victim, she told her that while she was in the house, accused pulled her from backside and grabbed her. Local peoples apprehended the accused and kept him tied. In her cross she stated that she cannot say who was in the house. She has heard that for teasing the victim by the accused while going to school, she has to restrain him from such incident. Victim 'P' did not tell her exactly on which part of her body accused grabbed her.
- 13. PW 6 Sri Manoranjan Sarma in his evidence deposed that on 05.12.2016, when he went to the house of his sister at Bamunpukhuri T.E. for visit, he came to know that victim 'P' was taken to Ligiripukhuri Hospital. On this, he went to hospital for taking her care. On asking the victim, she told him that accused has teased her. Police interrogated him. Police seized one HSLC

registration Card of victim 'P' vide Exbt. 3 the seizure list. In the seizure list, it is mentioned that date of birth of the victim 'P' was 20.11.2000. In his cross by defence, PW 6 deposed that on asking, victim told him that accused teased her on the road while she was going to school.

14. PW 7 SI Nurtaz Ali in his evidence deposed that on 05.12.2016, at about 7 PM the then O/C has received one information over phone from VDP Secreatay Sri Puneswar Kurmi of Bamunpukhuri T.E. regarding commission of rape on victim 'P' Rajput of Line No. 8 by Haresh Nayak after taking advantage of absence of other family members. It was also informed that accused was apprehended by local people and kept him tied. On getting this information, same was entered in G D Entry book vide Nazira PS G D Entry No. 134 dated 05.12.2016 and entrusted him to proceed to the place of occurrence and to investigate the matter. Exbt. 4 is the abstract certified copy of Nazira PS G D Entry No. 134 dated 05.12.2016. Accordingly at about 8 pm, he arrived at Bamunpukhuri, the place of occurrence i.e. residence of the victim 'P' Rajput and saw that the accused Haresh Nayak was kept apprehended there. He was taken into custody. He drew a sketch map of the PO. Exbt. 5 is the said sketch map. The incident of sexual assault took place inside the house of the victim. He also examined witness found at the PO. He met the victim. Thereafter he returned to PS with the accused. On 06.12.2016 at about 11 AM, victim 'P' Rajput has submitted one written FIR at Nazira PS and accordingly Nazira PS case No. 234/16 u/s 8 of POCSO Act was registered. He was entrusted to investigate the case. On taking charge of investigation, victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. Accused was arrested and forwarded to Court. During investigation, he has seized birth certificate of the victim 'P' Rajput vide Exbt. 3 seizure list. Orignal was handed over in zimma. As per birth certificate, date of birth of the victim is 20.11.2000. During investigation, he has collected the medical report and statement given by victim in Court. Exbt. 6 is the medico legal report. As per medical report, the M/O has opined that the victim is above 18 years of age, that there was no injury marks on her person and private parts and no

sign of sexual intercourse was detected on the body of victim. On completion of investigation, he has submitted charge sheet against the accused u/s 8 of POCSO Act vide Exbt. 7 the charge sheet. In his cross examination by defence PW 7 admitted that in the FIR, there was no mention of cause of delay in filling the FIR. He has seized the Xerox copy after comparing the same with original Registration Card as produced by victim. He has not examined Gopal Sing Rajput and Rajib Munda. Madhab Singh was neighbour but he has recorded statement of his wife Mukheswari. He has recorded statement of Ramesh Rajput, son of Mani Singh Rajput, the other neighbour. He denied that he has not investigated the case properly and laid the charge sheet without sufficient material.

- 15. Point No. I: So far age of the victim is concerned, the victim while adducing evidence in court on 21.03.2017 as PW 1 has claimed her age as 16 years. PW 7, the I.O. in his evidence deposed that during investigation he seized one birth certificate of the victim vide Exbt. 3 seizure list and as per the said birth certificate, the date of birth of the victim is 20.11.2000. In his cross he admitted that he seized the xerox copy after comparing the same with original Registration Card. The I.O. has also deposed that during investigation, he has collected the medical report (Exbt.6) and in the said medical report the Medical Officer has opined that the victim is above 18 years of age. On going through the record it appears that one xerox copy of the HSLC Registration Card is available in which, the date of birth of the victim is shown as 20.11. 2000 and mention of same also found place in the seizure list Exbt. 3. However on going through the Exbt. 6, the medical report it appears that as per radiological examination the age of the victim was mentioned as above 18 years. Prosecution has failed to bring the original certificate and also to take evidence on oath either from the victim or from any other witness. As such, the medical evidence appears to be more reliable in this case and accordingly I hold that on the date of alleged incident the victim was aged above 18 years.
- 16. <u>Point No. II & III :</u> So far offence of house trespass and allegation of penetrative sexual assault/sexual assault on the victim 'P' is Spl. (P) Case No. 57/2016 Page 7 of 10

concerned, the victim in her evidence stated that on 05.12.2016, at about 6 pm, accused Haresh Nayak entered into her house and grabbed her from backside. On her hue and cry, her aunt Labanya Rajput arrived there and saw the accused in harassing her. In her cross examination she admitted that prior to this incident, another case was lodged against the accused and in that case accused got released from Police Station. She denied that to settle the score, she lodged this false case by framing the accused. From the evidence of PW 2 Smt. Labanya Rajput, aunt of the victim it appears that on hearing hue and cry at the residence of victim, she went there and saw the accused in coming out of the said residence. Though PW 1 stated that PW 2 has seen the accused in harassing her, but PW 2 did not support this part of evidence of PW 1. According to PW 2, she saw the accused while coming out only. In her cross PW 2 specifically admitted that she has not seen the accused inside the room of the victim. She also admitted the fact of lodging previous case against the accused by the victim and due to non-arrest by police, they got offended. The other witnesses mainly PW 3, PW 4, PW 5 and PW 6 are hearsay witnesses so far coming of the accused to the house of the victim and the allegation of physical assault on her. PW 4 is the brother of the victim, who deposed that after apprehending the accused from road and keeping him tied with a tree, he asked his sister about the incident. PW 3 and PW 5 subsequently arrived there and saw the accused while kept apprehended. PW 5 and PW 6 in their cross admitted that upon arrival there, on asking the victim, she told them that accused teased her on the road while she was going to school. This part of evidence of PW 5 and PW 6 shows that no incident of house trespass or making sexual assault on 05.12.2016 took place upon the victim. Action of PW 4 reinforces the defence plea that prior to this incident, on the matter of teasing of the victim, the victim filed a case and in that case accused managed to get release from Police Station and on getting annoyed, she filed this false case against the accused. The evidence of the victim so far house trespass and sexual assault on her is found suspicious and doubtful.

17. As such, from the materials on record, I am compelled to hold Spl. (P) Case No. 57/2016 Page 8 of 10

that the evidence of PW 1 and PW 2 cannot be relied upon so far offence of house trespass and the allegation of sexual assault by the accused is concerned. It may be noted here that though charge was framed u/s 6 of POCSO Act 2012, but there is nothing on record to show that victim was subjected to penetrative sexual assault by the accused.

- 18. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of offences u/s 6 of POCSO Act 2012 and Section 451 IPC or any other minor offence against the accused Haresh Nayak. As such, accused Haresh Nayak is acquitted from the charges u/s 6 of POCSO Act 2012 and Section 451 IPC on benefit of doubt and set at liberty forthwith.
- 19. Bail bond executed by the accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- 20. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation u/s 357-A Cr.P.C.
- 21. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 22. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 25th day of May 2018 Sivasagar.

Special Judge, Sivasagar

APPENDIX

- 1. Prosecution witnesses:
 - P.W.1 (Victim 'P')
 - P.W.2 Smt. Labanya Rajput
 - P.W.3 Sri Puneswar Kurmi
 - P.W.4 Sri Ramesh Rajput
 - P.W.5 Smt. Mukheswari Rajput P.W.6 Sri Manoranjan Sharma

 - P.W.7 -SI Nurtaz Ali (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. Court witnesses None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 164 Cr.P.C. statement of the victim
 - Exbt.3 Seizure list
 - Exbt.4 Abstract certified copy of Nazira P.S. GD Entry No.134, dated 05.12.16
 - Exbt.5 Sketch map
 - Exbt.6 Medico legal report
 - Exbt.7 Charge-Sheet

Special Judge <u>Sivasagar</u>