IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 46 of 2016
(Arising out of Tarabari P.S. Case No.411/2016)
U/S 8/18 of PROTECTION OF CHILDREN FROM SEXUAL
OFFENCE ACT, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 01.12.2016

State of Assam

- Vs -

Samsul Hoque.....Accused.

Date of Recording Evidence on - 15.12.2016, 18.04.2017,

05.08.201722.05.2019

Date of Hearing Argument on - 30.05.2019

Date of Delivering the Judgment on - 11.06.2019

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. Dipak Das, Ld Sr. Advocates.

JUDGMENT

1. The brief fact, of the prosecution case, is that on 20.10.2016 one Jintu Ali lodged an FIR in Tarabari police station stating inter alia that his daughter (X) aged about 6 years have been reading in Class-II in "Holly Public School" but as alleged on 19.10.2016 the accused/teacher by calling her into his room in the school in the name of checking her home work, touched her vagina. It is stated that prior to this, accused did the same thing 3 /4 days. When the girl informed her parents regarding the incident on her return from school, informant and his wife went to school to enquire about the incident but the teacher was missing in the school. Hence the case.

- 2. Following the information as above, Tarabari police station registered a case being Tarabari PS Case No.411/16 u/s 8/18 of POCSO Act and investigated the case.
- 3. During the course of investigation, police recorded the statement of the witnesses u/s 161 Cr.P.C. Thereafter, sent the victim girl to court for recording her statement u/s 164 Cr.P.C. and also sent the victim girl for medical examination. Thereafter, on conclusion of investigation, police finally laid the charge sheet against accused u/s 8/18 of POCSO Act with a view to stand trial.
- 4. During the course of time, accused entered his appearance in court. On his appearance, all the particulars of the case record have been furnished to him as provided u/s 207 Cr.P.C.
- 5. Thereafter, having heard the learned counsels appearing for both sides and perusing the materials on record, having found a primafacie case charges u/s 8/18 of POCSO Act was framed by my learned predecessor vide order dated 01.12.2016. The particulars of the offences on being read over and explained accused pleaded not guilty and claimed trial.
- 6. During the course of trial, prosecution examined as many as 7 witnesses including the alleged victim girl, medical officer as well as the investigating officer.
- 7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. Accused has however, denied having his involvement with the offence alleged. As such, on being asked accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

8. Now point for determination ;-

- 1. Whether on 19.10.2016 accused committed sexual assault on the minor girl of the informant in the school as alleged?
- 2. Whether on the same date and time accused attempted to commit sexual assault on the minor girl as alleged ?

9. Discussion, Decision and reasons for such decision :-

I have heard the arduous contention of the learned lawyers appearing for both sides and carefully scanned the evidence available on record for

arriving at a just decision of the case.

- 10. Advancing her argument the learned Addl. P.P. submitted that given the prosecution evidence available on record, it is a fit case for sustaining conviction u/s 8/18 of POCSO Act. It is submitted that the version of the victim girl reveals that accused in the name of checking her homework, hold her mouth shut and put his hand inside her pant. Coming home back she let the matter know to her mother. She further submitted that prior to this incident the accused did the same thing for about five days with the victim girl. Then her mother went to school and also informed the matter to police. She also stated that she was brought to court for recording her statement. Ext.3 is her statement u/s 164 Cr.P.C. and Ext.3(1) and 3(2) are her signatures. The version of the victim has been corroborated by her mother (PW-3) and father (PW-2) in material particulars as they were informed by the victim girl about the incident. Refusal to examine the victim by doctor does not weaken the prosecution case because there would be no sign of sexual assault unless there is allegation of serious kind. In the instant case, the girl stated that accused touched her vagina by calling her to school room in the name of checking the homework. The evidence of PW-1, PW-2 and PW-3 though mother, father and daughter their evidence cannot be discarded as interested witness being the members of the same family. Therefore, the learned counsel for the state submitted that it is a fit case for sustaining conviction u/s 8/18 of POCSO Act.
- 11. The learned counsel appearing for the accused person however, contended that it is out and out a false case. None had seen the incident except the alleged victim girl who because of her tender age of 6 years is not in a position to depose evidence. She is not aware of the consequences of right and wrong. Therefore, the learned counsel submitted that there is strong suspicion about the prosecution story regarding the accused committing such crime against the minor girl. Hence, it is contended by the learned counsel appearing for the accused that it is a fit case wherein accused can be acquitted from the charges on the ground of benefit of doubt.
- 12. The learned Senior counsel Sri Dipak Das, appearing for accused vehemently contended that the medical evidence of PW-1 completely negated the case as the doctor did not agree for medical examination.
- 13. This is natural because allegation against accused was touching the

private part of the victim girl by pulling her shirt after calling her to the school in the name of checking her homework. Admittedly, the incident occurred on 19.10.2016 and the FIR was lodged on the next day morning i.e. on 20.10.2016 whereas the police sent the victim girl for medical examination on 15.12.2016 after the lapse of about 1 month 27 days. In such belated stage refusal of the mother of the victim girl to examine the victim by doctor cannot be said to be unusual conduct because at such belated stage, examination by doctor carries no significance except mere formality. Moreover, the allegation was touching the private part of the victim girl by the accused/teacher on 19.10.2016 and prior thereto. Therefore, given the nature of allegation examination of the victim girl by doctor do not carry any corroborative evidentiary value.

- 14. Having heard the rival contention, this court is required to examine carefully the evidence available on record in the context of arguments advanced by the learned lawyers appearing for both sides.
- 15. On perusal of the evidence of all the 7 prosecution witnesses, this court found that the prosecution case is solely based on the evidence of the victim girl and her parents namely-PW-2, PW-3 and PW-4.
- 16. In his evidence, PW-2 Md. Jintu Ali, who is the father of the victim girl cum informant deposed that at the relevant time his daughter was reading in Class-I of Holly Public School, Chenga and his daughter was 7 years old then. His wife informed him over phone that accused by pulling the shirt of his daughter, touched her private part in the school hence he was called. Accordingly, he came to his residence from Guwahati and went to the school in the morning but accused ran away from the school. Several persons gathered there. Accused hide in the house of one of the villager. Later on, police brought him. Regarding this incident, he filed the FIR. Ext.2 is the FIR and Ext.2(1) is his signature.
- 17. In his cross examination he stated that there was a school management committee which run the school. He also stated that accused did the same crime in another school but he was removed from there for his misdeeds and he did the same thing in the present school. However, he did not inform the matter to the owner of the school. There are four male teachers and two female teachers in the said school. He did not disclose the matter to other teachers in the school. He do not know who is the Principal of the school.

- 18. PW-3 Musstt. Monowara Khatun is the wife of PW-2 also deposed that at the relevant time her daughter was reading in Class-I in Holly Public School. She stated that the teacher called her daughter to the school for 4/5 days to check her homework and then he touched her private part whenever she went to school, so she disclosed all the fact to her. Then she called her husband over phone who stayed in Guwahati. Having heard about the incident from her, her husband came home at 10:30 pm. On the next day morning, they went to the school and at the first by holding the shirt of accused she gave two slaps. Then nearby people came. Police also came. He informed the matter to Principal but did nothing. Therefore, case was filed in the evening. She do not know whether the classmate of her daughter knows about the incident. She had not seen the incident. She was informed only by her daughter. She did not inform the matter to the Principal as he was not present in the school. She also did not state the fact to others.
- 19. PW-4 is the victim girl who also deposed that the accused is her teacher who called her to the school in the name of checking her homework and then by pulling her shirt, put his hand under her pant. Then she told the incident to her mother. He also did the same thing 4/5 days earlier. Then mother went to school and called the teacher. Then people called police. Now she has been reading in another school. She also stated that she was brought before the Magistrate by police and before doctor. Ext.3 is her statement u/s 164 Cr.P.C. Ext.3(1) and 3(2) are her signatures. She also stated that she narrated the story to police.
- 20. In her cross examination she stated that the name of her father is Jintu Ali and the mother is Monowara Khatun. Both love her most and she obeyed her parents. But she denied that she deposed in court as tutored by her parents. Though she came to court along with her mother and they told her that she would be required to depose evidence in court but she is not telling what her parents said.
- 21. From the evidence of PW-2, PW-3 and PW-4 it transpires that after the incident occurred the victim girl told the story to her mother who then told it to her husband and all of them narrated that accused who is a teacher in the "Holly Public School" in the name of checking the homework call the victim girl to the school and by touching her private part under her pant which act has been done by accused earlier for 3 /4 days. On perusal of the statement of the

PW-2, PW-3 and PW-4 recorded by police u/s 161 Cr.P.C. it appears that they consistently stated that accused by calling the victim girl to the school in the name of checking her homework touches her private part. There is absolutely no contradiction or inconsistencies in their evidence in court with that of their statements u/s 161 Cr.P.C.

22. Now, the question is whether the evidence of PW-2, PW-3 and PW-4 are credible and trustworthy and whether their evidence can be discarded as interested witness. Admittedly, the nature of allegation against the accused is very very sensitive in nature and no one desires to disclose such fact to others because of fear of loss of prestige and reputation. People react sharply when such incident reaches extreme point and feel pain to bear such act in their mind. The fact that the victim girl is minor only 7 years old her evidence cannot be disbelieved merely because she was reluctant to disclose the fact to others except to her parents. Therefore, the evidence of PW-2, PW-3 and PW-4 cannot be disbelieved because parents also did not disclose the fact to others. Having learnt about the ordeal of their daughter at the hands of the teacher, the parents PW-2 and PW-3 reacted instantly by visiting the school on the next day morning charged the accused/teacher for his misdeeds and PW-3 giving two slaps on the teacher/accused is the natural and rustic reaction of the parents which is a natural human conduct. As it appears, the parents instead of disclosing it to others want explanation from the accused/teacher for his misdeeds. Given the nature of evidence adduced by PW-2, PW-3 and PW-4 in the estimation of this court, their evidence cannot be thrown out as interested merely because they are parents and victim. As categorically deposed by PW-4 the victim girl, the conduct of the accused/teacher by any stretch of imagination do not fall in the arena of civility. The conduct of the accused was barbaric and uncalled for. He is a shame in the name of teacher. He put a strain in the relationship of teacher and student. His conduct is beyond imagination of a minor girl of 7 years whom he exploited sexually on 4/5 occasions by taking her innocence. In her statement before Magistrate u/s 164 Cr.P.C.(Ext.3) the victim girl in no uncertain terms stated that accused is her teacher who taught her mathematic. Accused called her to the school in the name of checking her homework and touches her vagina under her pant which act was done by him four/five times. Therefore, the evidence of the victim girl inspires confidence in the mind of the court about the authenticity

of the incident. There is no contradictions of her evidence in court with that of her previous statement before Magistrate u/s 164 Cr.P.C. so as to entertain any doubt regarding credibility of her deposition. As per section 118 of Indian Evidence Act, every one is a competent witness he/she is prevented from understanding the questions put to them or from giving rational answers to those question due to tender years, extreme old age, disease, whether body or mind or any other cause of the same kind. In the present case, the victim girl give rational answers before Magistrate at the time of recording her statement u/s 164 Cr.P.C. as well as at the time of deposing her evidence in court. It is a fact that such an act is done by accused in opportune moment, in a lonely state and it cannot be disbelieved as unworthy of credit because teacher committing such offence against the minor girl is not unusual. Such incident have been happening in the society but in most of the cases, it never comes to light because of parents or the victim do not desires to disclose it to others out of shame and prestige. But in the present case, parents comes out and react sharply. The FIR was lodged immediately on the next day of the incident and it cannot be said that there is delay in lodging the FIR because on the day of disclosing the incident by the victim girl to her mother, father was at Guwahati and on coming home from Guwahati and after due deliberation, they decided to proceed against the accused. Therefore, one day delay in lodging the FIR is not fatal to the prosecution case.

- 23. PW-5 Abdul Mannaf Ali in his evidence deposed that the incident occurred about one year back at about 8:30 am in the school when he was discussing with Bahar Khan the another teacher regarding the prayer in the school. Then the victim girl, mother and her father came to school and the mother assaulted the teacher. Then they came out and hide the accused. The villagers also came and the matter was informed to police who then took the accused to the police station.
- 24. PW-6 Abdul Hamid also deposed in the same vain. He was in his residence with his guest but having got the information he rushed to the school and saw a gathering in the school as well as police. Then the mother of the victim girl rushed towards him but police restrained her. Then he wanted to know why the woman was so furious. Then he came to know that accused misbehaved her daughter.
- 25. From the evidence of PW-5 and PW-6 it also appears that the parents

visited the school and there was an unusual situation regarding the conduct of the accused against the daughter of the informant. From the evidence of PW-5 and PW-6 it appears that the parents of the victim girl was very much angry against the accused and it is not without any reason. Parents do not react in such manner unless something unusual happened. They feel pain for the act done by accused against their daughter and this reaction is in the estimation of this court cannot be said to be an out brust for no reason. Interestingly, during the course of cross-examination of the prosecution witnesses, defence failed to paint any other probable story to show that parents and the victim girl deposed false evidence against the accused because of their enmity or due to old personal grudge.

- 26. Therefore, this court can very well draw the presumption as provided in section 29 and 30 of the POCSO Act, 2012 that accused had the culpable mind in calling the victim girl to school in the name of checking her homework and then touching her vagina under her pant. So, accused has the intention or knowledge that he is committing a crime against a girl of very tender age which is an act reprehensible by any sensible human being. Accused not only put a strain in the teacher students relationship but also invaded into the privacy and sexuality of the victim girl and attempts to violate her dignity as a person. The act of the accused is certainly an aggression into her privacy and sexuality.
- 27. From the cross examination of the I/O by defence it appears that the I/O did not investigate the case in the manner expected of an investigating officer. The evidence of PW-1 also shows that he sent the victim girl for medical examination almost after two months of the incident which is a glaring negligence on the part of the investigating officer which shows his insensitiveness to the issue at hand. In the case at hand, the investigation appears to be defective but it would not be right in acquitting the accused solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer whose investigation is designedly defective. Even if, as pointed out by the learned defence counsel investigation is a little bit defective, but that pales into insignificance when ocular testimony of the victim and her parents are found credible and cogent. There is no crack in the evidence of the vital prosecution witness as pointed out by the learned defence counsel Sri Dipak Das. The act of the accused certainly attracts the

ingredients of offence described in section 7 of POCSO Act attracting punishment u/s 8 of POCSO Act.

- 28. In view of the foregoing discussion and reason, this court comes to the findings that prosecution has been able to establish the case against the accused u/s 8 of POCSO Act beyond all reasonable doubt. Therefore, accused is found guilty for the offence u/s 8 of POCSO Act.
- 29. On the other hand, on careful assessment of the evidence on record, this court finds that the act of the accused do not fall within the parameters of the offence u/s 18 of POCSO Act. As such, accused is acquitted from the said charge.
- 30. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case and the age of the accused the nature of the offence committed, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused.

SENTENCE HEARING

- 31. I have heard the accused person on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused person having his family to maintain. So, in the event he is put behind bar his innocent family members would suffer a lot. Hence, accused pleaded clemency.
- 32. Heaving considered all the attending facts and circumstances of the case and the nature of the offence proved and punishment prescribed in section 8 of POCSO Act, 2012 accused is convicted and sentenced to undergo Rigorous imprisonment for a term of 4 years (four years) and fine of Rs.1000/-(one thousand) i/d S/I for 6 (six) months.
- 33. The period of detention, if any, undergone by accused during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.
- 34. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 35. Let copy of the judgment be forwarded to the learned District

Magistrate, Barpeta as provided in section 365 Cr.P.C.

- 36. Let the case record be consigned to record room after completing the formalities.
- 37. Given under my hand and seal of this Court on this 11.th day of June, 2019.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta

APPENDIX

- 1. The prosecution has examined the following 7 nos. of witnesses :-
- PW-1 = is doctor Anima Boro (M/O).
- PW-2 = is Md. Jintu Ali, the informant.
- PW-3 = is Mst. Monowara Khatun.
- PW-4 = is victim girl(X).
- PW-5 = is Abdul Mannaf Ali.
- PW-6 = is Abdul Hamid.
- PW-7 = is Sri Badan Chandra Borah, the I/O.
- 2. The prosecution has exhibited following document:
- Ext.1 = is the medical report.
- Ext. 1(1) = is the signatures of doctor Anima Boro.
- Ext.2 = is the FIR.
- Ext.2(1) = is the signature of informant Jintu Ali.
- Ext.3 = is the statement of victim recorded by Magistrate u/s 164 Cr.P.C.
- Ext.3(1) & 3(2) = are the signatures of victim (X).
- Ext.4 = is the sketch map.
- Ext.4(1) = is the signature of S/I Badan Chandra Borah.
- Ext.5 = is the charge sheet.
- Ext.5(1) = is the signature of S/I Badan Chandra Borah.
- Ext.E(1)= is the signature of M/O

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.