IN THE COURT OF SPECIAL JUDGE :: :: ::::::: CACHAR, SILCHAR Spl.(POCSO) Case No.17 of 2019

(U/S 354B IPC and under section 10 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of AssamComplainant.

-Versus-

| Dulal Das | Accused. |
|---------------------------------------|-----------------|
| Charge framed on: | 21.10.19 |
| P.Ws. examined on: | 30.1.20,25.2.20 |
| Argument heard on: | 25.2.20. |
| Judgment pronounced and delivered on: | 25.2.20. |

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr.S.Sengupta, Id. Advocate.

<u>JUDGMENT</u>

- 1. The prosecution case, in brief, is that the informant lodged an FIR with the I/C of Malugram TOP stating the facts that the minor victim daughter of the informant used to go to the house of accused for tuition to his daughter and the accused on 24.4.18 sexually assaulted the victim. While the victim returned from tuition the informant noticed mark of bite on her cheek and the victim reported the incident to the informant.
- 2. On receipt of the FIR, I/C, Malugram TOP forwarded the same

to Silchar PS wherein a regular PS case vide Silchar P.S. Case No.1318/18 U/S 326 IPC R/W Section 8 POCSO Act was registered. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. and she was medically examined. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet against accused U/S 326 IPC r/w section 8 of POCSO Act.

- 3. The offence u/s 326 of IPC r/w Section 8 of POCSO Act being exclusively triable by the Court of Special Judge, this case was taken up for trial by this court. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 354B IPC and under section 10 of POCSO Act was framed by this court against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether on 24.04.18 at about 8 p.m. the accused person assaulted / used criminal force to the victim with intention to disrobe her or compelling her to be naked, as alleged ?
- (ii) Whether the accused person committed aggravated sexual assault with the victim, as alleged?
- 5. Prosecution side examined as many as 3 witnesses including the victim and the informant. On the submission of the Id. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW.1 Rita Rani Das, the informant, deposed in her evidence that about one and half years ago, in the month of April, the occurrence took place and she used to send her victim daughter to the house of the accused as his daughter Priyanka Das was her private tutor. On the date of occurrence, the victim girl went to the house of the accused for tuition to Priyanka Das.At that time, Priyanka Das due to her exam, was busy with her studies and she requested her father i.e. accused to do tuition to the victim girl. She further deposed that on the following day, she noticed a pinch mark on the cheek of the victim girl and on query the victim girl told that as she could not answer the accused regarding study questions, the accused pinched her on her cheek and so she sustained injury on her cheek. Then at the instruction of Childline, PW.1 lodged FIR with the Malugram TOP.

In her cross examination PW.1 stated that her victim daughter had been going for tuition to the house of the accused since 3/4 months prior to the alleged occurrence. During the aforesaid period, victim never complained her against the accused. Victim used to go to the tuition at about 6 PM in the evening everyday and she used to return at about 8 PM. She further stated that she had not noticed any pinching mark upon the cheek of the victim on the previous night after returning from tuition. She also stated that the victim had also not reported her any pain or suffering. She further stated in her cross examination that victim also told her that daughter of the accused Priyanka Das was also studying on the same table with the victim. She also stated that the FIR was got written by a member of Childline and asked her to put her signature. Police never took any wearing apparel of her

victim daughter from her. She put her signature as Ext. 2(1) at Malugram TOP as per instruction of police and at the time of putting her signature, the Ext. 2 was blank paper. She also stated in her cross examination that she stated to police that the victim girl told her that as she could not answer the accused regarding study questions, the accused pinched her on her cheek and so she sustained injury on her cheek.

9. PW.2, the victim, deposed in her evidence that the occurrence took place about two years ago and at that time, she used to go to the house of accused Dulal Das for tuition and on that particular day the Priyanka Das, daughter of the accused Dulal Das pinched her on her cheek. She further deposed that on the following day at the time of taking bath, her mother noticed that pinch mark on her cheek, and that at the instance of childline, her mother lodged the FIR. Police produced her before the Magistrate where her statement U/S 164 Cr.P.C. was recorded she was also medically examined and police as per order of the Court had given her in zimma of her parents. She further deposed that at the time of occurrence she was a student of class VII.

In her cross examination she stated that she has not stated to police as to how she got pinched mark on her cheek and she has also not stated to doctor, at the time of her medical examination at SMCH, as to how she got pinched mark on her cheek. She also stated that she gave statement before Magistrate u/S 164 Cr.P.C in Ext. 3 as tutored by the persons of childline.

10. PW.3, Reba Das, mother of the informant and grandmother of victim deposed in her evidence that the occurrence took place about two years ago on the following day of the occurrence, she noticed pinched mark on the

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cheek of the victim and on being asked she said that the daughter of the accused caused the pinched mark as she could not answer the questions.

In her cross examination she admitted that she has not stated anything to police.

- 11. So, from the statement of prime witness i.e. the victim PW.2 it appears that at the relevant time in course of her tuition her teacher who is daughter of the accused pinched her on her cheek and at the time of bathing her mother noticed that pinch mark on her cheek. The victim in her evidence as discussed above did not at all implicate the accused in the alleged offence of crime as leveled against him in any way. PW.1, the informant, who is a reported witness though stated that victim reported her that accused pinched her on her cheek as she could not answer the study question and she sustained injury, but in view of the evidence of victim herself as discussed above such piece of evidence of PW.1 could not entangle the accused in any way in any offence. PW.3 also did not implicate the accused in the alleged offence of crime. In view of the evidence as discussed above, particularly in view of the evidence of prime witness the victim, the accused deserves to be acquitted.
- 12. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/S 354B IPC and section 10 of POCSO Act against the accused person.
- 13. In the result, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith.

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Bail bond stands discharged.

Judgment is pronounced and delivered in the open court on this the 25th day of February, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge,

Special Judge,

Cachar, Silchar.

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer Gr. I

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APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 — Rita Rani Das

P.W. 2 – victim

P.W. 3 – Reba Das

- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: -

Ext.1- FIR

Ext.2-Seizure list

Ext.3- Statement of victim.

- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge,

Cachar, Silchar.