IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, <u>Sivasagar</u>.

Spl. (P) Case No. 18 of 2015 U/S 12 of POCSO Act. (Arising out of Charaipung P.S. Case No. 159/2015)

State of Assam

-Vs-

Sri Babor Bhuyan Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P. P.

For the accused : Sri G. R. Konwar, Advocate

Date of framing Charge : 16.10.2015

Dates of Evidence : 22.12.2015, 24.02.2016, 02.02.2017,

24.03.2017, 12.06.2017.

 Date of S/D
 :
 11.07.2017

 Date of Argument
 :
 05.01.2018

 Date of Judgment
 :
 19.01.2018

<u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 27.06.2015, Smt. Munu Bhuyan lodged an FIR with I/C, Nitaipukhuri Out Post alleging, inter alia, that on that day, at about 4.00 P.M., while her daughter victim 'C' (named withheld), aged about 10 years was alone in the house, accused Babor Bhuyan came to her house and attempted to disrobe her. On this, victim rushed to her grandmother and reported the incident and when her grand-mother came out in search of the accused, he flew away from the house.
- 2. On receipt of the FIR, Nitaipukhuri O.P. G.D. Entry No. 421, dated

- 27.06.15 was made and forwarded the FIR to O/C Demow P.S. for registering a case. Accordingly Demow P.S. Case No.159/2015 U/S 12 of POCSO Act, 2012 was registered and investigated into. During investigation, I.O. visited the place of occurrence, prepared sketch map and recorded the statement of the witnesses. During investigation, accused was arrested and on 29.06.2015 produced him before the court for judicial custody. The victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 12 of POCSO Act, 2012 against the accused person.
- 3. On receipt of charge sheet, copy was furnished to him. After hearing both the sides, vide order dated 16.10.2015, my learned predecessor in office has framed the charge U/S 12 of POCSO Act, 2012 against the accused to which he pleaded not guilty and claimed to stand trial. On this date, accused was allowed to go on bail. During trial, prosecution side has examined eight witnesses including the victim.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. G.R. Konwar, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

6. (I) Whether on 27.06.2015, at about 4 PM accused committed sexual harassment on the victim 'C' with sexual intent?

DECISION AND REASONS THEREOF

7. P.W. 1 Smt. Munu Bhuyan, the informant as well as the mother of the victim in her evidence deposed that at the time of incident, victim 'C' was aged about 11 years. On the date of incident, she and her husband went to

paddy field leaving behind her two minor children, her mother-in-law Bowli Bhuyan, victim and another woman. After returning from field, her mother-inlaw informed her that accused came to their residence and asked for a glass of water. Due to bad weather, while victim was sitting inside the room accused touched her breast and attempted to commit misdeed and on this, victim rushed to her grand-mother and accused flew away. On asking victim, she told her that accused grabbed her and attempted to commit misdeed. This matter was informed to Gaonburah and thereafter lodged the FIR Exbt. 1 at Nitaipukhuri Out Post. In her cross she admitted that accused is her neighbour and has visiting relationship with them. She denied the defence suggestion that after taking a loan of Rs. 1500/- she did not return the amount and on demand by the accused he was threatened to send him Jail. She also admitted that though there are about 20 to 25 persons have their residence near to her residence, she did not inform any one of them. The residence of Gaonburah is at a short distance. She denied that with an intention to not to return the amount she filed this false case against the accused.

8. P.W. 2, the victim 'C' in her evidence deposed that while she was returning home after sending one of her guest, the accused met her on the road and asked for a cup of country made liquor and came with her to her residence. She offered one cup of country made liquor. By that time the weather turned hostile and while she entered in her room, accused also followed her and caused her laid on the bed and touched her breast. On this she managed to escape and rushed to the residence of her grand-mother and informed the matter. On return of her parents, she informed the matter to them. Her mother lodged the FIR. Police got her medically examined and also took her to Court where she gave her statement. Exbt. 2 is her statement in Court. In cross-examination, she admitted that at their residence, she used to sell country made liquor. They have three rooms in their house. Country made liquor was kept in the third room. On that day she offered one bottle of country made liquor and accused paid for the same. After consuming liquor, accused

and she sat in one bench. While she was standing, accused touched her breast and she ran away to her grand-mother. At the same court-yard Rampal, Bhaikon, Bimal and their family members have their residence. After this incident, she was taken to the residence of the accused. She admitted that before police and Court she stated that at the time of incident, she was sleeping alone in her house. She denied defence suggestion that accused did not come to her house nor committed any misdeed with her.

- 9. P.W. 3 Smt. Boli Bhuya, the grand-mother of the victim in her evidence deposed that on the date of incident victim rushed to her house and out of fear hugged her. On asking victim told her that accused Babor had grabbed her with an intention to commit misdeed. While she went out in search of the accused, he flew away. In her cross she admitted that her house is adjacent to the residence of victim. She did not have good relation with the accused. She also denied that inspite of taking loan from accused they did not return the amount and filed this false case against the accused.
- 10. P.W. 4 Sri Bhaikon Bhuyan in his evidence deposed that accused Babor Bhuyan is his cousin and victim is his daughter. On 27.06.2015 while he returned from his work place, at about 4.00 p.m. he heard that while his daughter, i.e. victim was at home with her grand-mother, accused Babor Bhuyan came to his house and asked for a glass of water. Victim also told him that accused took her to bed and laid on the bed and touched her body. On making hue and cry, accused leave her and she ran to his mother Bowli Bhuyan and narrated the incident. On this, he took the victim to Gaonburah and as per his suggestion, he went to Nitaipukhuri Put Post and his wife Runu Bhuyan lodged the FIR. In cross examination, he deposed that he has country made liquor business at his residence. He denied the defence suggestion that as accused has restrained him from doing illegal liquor business, they have falsely implicated the accused without any incident. He denied that his victim has not told him regarding asking of water and taking to bed, touching her body etc. He

also denied that he has given false evidence. His mother is alive and presently she is aged about 60 years. Several peoples have their residence near to his house. He denied that as our case is based on false facts, none of the neighbour has come forward to adduce evidence.

- 11. P.W. 5 Sri Haren Khanikar in his evidence deposed that on 27.06.2015 while he was in his residence near Nitaipukhuri Out Post, he wrote an FIR as dictated by Munu Bhuyan. Exbt. 1 is the said FIR written by him. He proved his signature as Exbt. 1(2). In his cross examination he deposed that he has no personal knowledge about the incident. He usually writes FIR on request since last ten years. He has experience in writing FIR to make out a case. Police has recorded his statement. He denied the defence suggestion that he has exaggerated the facts in the FIR and did not state anything before police.
- 12. PW-6 Sri Bimal Bhuyan, uncle of the accused in his evidence deposed that victim C is his niece. At the time of occurrence she was aged about 10 years. On 27.06.2015, at about 4 pm, while he was returning home by taking cows, he saw that victim was crying at the residence of her grandmother Bawli Bhuyan. On this he went to said residence and on asking the reason for her crying, Bawali told him that accused Babar has grabbed the victim while she was alone by entering in her house. On asking victim also told him that accused came to her residence to consume liquor and finding her alone, grabbed her. In his cross-examination he admitted that Bowli Bhuyan is his mother. Victim complained the matter to his mother. Bhaikan is his brother. Victim is the daughter of Bhaikan.
- 13. PW-7 Smt. Kamala Bhuyan in her evidence deposed that accused Babar Bhuyan is her brother-in-law. Victim is her niece. At the time of occurrence she was a student of class VII. On 27.06.2015, on hearing hue and cry he went there and saw that Babar Bhuyan left the house of victim. On asking victim told her that while she was alone, accused Babar entered the house, asked for a glass of water and grabbed her. After grabbing her accused

laid her in bed and put the pillow on her mouth. After this, she took the victim to the residence of accused but seeing them accused flew away. In her cross-examination she admitted that she has not seen the incident of grabbing or laying of victim on bed. She denied to have deposed falsely.

- 14. PW-8 SI Sunthorn Shyam in his evidence deposed that on 27.06.2015, while he was posted as I/C Nitaipukhuri OP, on that day he received one written FIR from Munu Bhuyan and making a G D Entry vide No. 421 dated 27.06.2015 sent the FIR to Demow PS and accordingly O/C has registered Demow PS case No. 159/15 u/s 12 of POCSO Act and entrusted him to investigate the case. On taking charge of investigation, he examined the informant and other 2 at PS campus. Thereafter, he went to the place of occurrence i.e. residence of informant at Dupani Gaon and drawn a sketch map of the PO. Exbt. 3 is the said sketch map. He also examined witness found at the PO. During investigation, he apprehended the accused. Victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. During investigation, he collected the medical report and statement given by victim in court. Exbt. 4 is the medical report of victim. In the medical report the age of the victim was mentioned as above 16 years but below 18 years. It is also opined that no injury was found on the body of the victim. On completion of investigation, he submitted charge sheet against the accused u/s 12 of POCSO Act. Exbt. 5 is the charge sheet. In his cross-examination PW 8 denied the defence suggestion that he has recorded statement of witnesses at the dictation of the victim. He also denied that he did the investigation perfunctorily.
- 16. From the above evidence on record, let me decide the point formulated. So far the age of the victim is concerned, from the evidence on record, particularly from the evidence of P.W. 1, the mother of the victim and P.W. 6, the uncle of the victim it appears that at the relevant time victim was aged about 10-11 years. However I.O. (P.W.8) while proving the medical report

vide Exbt. 4 deposed that in the medical report age of the victim was mentioned as above 16 years but below 18 years. While giving her evidence in court on 24.02.2016, the victim stated her age as 11 years. Defence has not challenged the age of the victim at any point of time. So from the above evidence on record it appears that on the date of occurrence victim is below the age of 18 years and is a child defined under POCSO Act.

- Now coming on the allegation of sexual harassment upon the victim, admittedly except P.W. 2 the victim, other witnesses heard the incident from the victim 'C' and they have not seen the incident of their own. However they led certain circumstances regarding the incident. Let me see how far the evidence of victim 'C' is reliable. In the course of argument hearing, learned SPI PP has vehemently argued that the evidence of the victim is found wholly reliable to hold that she was subjected to sexual harassment by the accused. The other witnesses who heard the incident from victim has duly supported her. He also argued that just after the incident, victim reported the matter to PW 3 and on return of her parent, she informed the matter to them. On the other side, learned advocate for defence has advanced one line argument that prosecution has failed to prove the case and as such, accused should be acquitted.
- 18. If we closely scrutinize the evidence as narrated herein-above, it is seen from the evidence of P.W. 2, the victim, that after sending off the guest, while victim returned home and was alone in her house, accused came to her house, purchased a glass of liquor and consumed the same. By that time the weather turned hostile and while victim entered in her room, accused followed her and grabbed her. Immediately she got herself rescued, informed the matter to Bowli Bhuyan (P.W.3) and thereafter her parents and others. During cross examination defence has confirmed the fact of coming of accused to the house of victim and purchasing of one liquor bottle by paying Rs. 10/- for the same. P.W. 3 Bowli Bhuyan in her evidence briefly stated that on the date of incident,

suddenly victim 'C' came running to her and told her regarding hugging her by the accused. While she went to search the accused, she saw the accused was going out of the house. P.W. 7 Smt. Kamala Bhuyan in her evidence also stated that on hearing hue and cry at the residence of the victim, she went there and saw the accused Babor Bhuyan while leaving the house. From the above evidence, it is clear that on the day of occurrence, i.e. on 27.06.2015, at about 4.00 P.M. while victim was alone in her house, accused Babor Bhuyan came to her house, purchased liquor and consumed the same and he was seen by P.W.3 and P.W.7 while leaving the house of the victim. Thus presence of accused in the house of victim is proved beyond doubt.

- 19. From the evidence of P.W.2, the victim it further appears that she has reported the matter of grabbing her by the accused to her parents and other witnesses. P.W. 1 and P.W. 4, being the parents of the victim, PW 3, P.W. 6 and P.W.7 who are the residents of the same campus in their evidence have categorically stated that just after the incident, victim has reported them that accused came to her house and after asking for a glass of water, while she entered the house, accused grabbed her. This part of evidence remains corroborated by P.W. 2, the victim that she has informed the matter to them.
- 20. It may be noted here that though other witnesses were silent on purchasing liquor and their evidence confined to taking a glass of water, to my mind it is nothing but a minor discrepancy and needs to be overlooked in the light of reliable evidence of grabbing of the victim by the accused at her house. The other discrepancies as pointed out as to whether the victim was laid on the bed or not is also immaterial because grabbing of a minor girl while she was alone clearly indicates that accused has sexual intent tried to have physical contact. Defence plea was that prosecution has failed to prove the case is not acceptable.
- 21. Hon'ble Supreme Court in the case of B.B.Hirjibhai vs. State of Gujrat(AIR 1983 SC 753) held that

"over much importance cannot be attached to minor discrepancies. The reasons are obvious:

- a) By and large a witness cannot be expected to possess a photographic memory and recall the details of an incident. It is not as it video tape is replayed on the mental screen.
- b) Ordinarily it so happens that a witnesses over taken by events . The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties is therefore cannot be expected to be attuned to absorb the details.
- c) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.
- d) By and large people cannot accurately recall a conversation and reproduce the very words used by them for heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect witness to be human tape recorder.
- e) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess word on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time sense of individuals which varies from person to person.
- f) Ordinarily a witness cannot be expected to recall acutely the sequence of events which take place in rapid succession or in a short time spun. The witnesses is liable to get confused, or mixed up when interrogated later on.
- g) A witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix-up facts, get confused regarding sequence of events, or fill up detail from imagination on the spar of moment. The subconscious mind of the witness sometimes so operates on account of the fear of liking foolist or being disbelieved though the witness is giving a truthful and honest account of occurrence, witnesses by him perhaps it is a sort of psychological defence mechanism activated on the spurt of the moment."

It is further held that "discrepancies which do not go to the root of the matter and stake the basis version of the witness therefore cannot be annexed with undue importance. More so when the all-important probabilities-factor echoes in favour of the version narrated by the witnesses."

- 22. In this case, the discrepancies as pointed out do not go to the root of the case, Hence I found the evidence of victim as reliable and trustworthy so far the allegation of sexual harassment is concerned by way of grabbing her by the accused.
- 23. In view of above discussions, I hold that prosecution has been able to make out a case of sexual harassment by the accused upon the victim with sexual intent and as such accused is liable for punishment under Section 12 of POCSO Act, 2012.
- 24. Considering all above, accused Babor Bhuyan is held guilty for the offence punishable U/S 12 of POCSO Act, 2012 and convicted accordingly for the said offence.
- 25. I have considered the applicability of Section 3 & 4 of Probation of Offenders Act in this case. Considering the nature of the offence proved by the prosecution, I am not inclined to extend the benefit of Section 3 and 4 of Probation of Offenders Act to the convict.
- 26. Heard the convict on the point of sentence. His statement is recorded in separate sheets. Accused stated that he is innocent. I have also heard learned Advocate for both the sides. Learned PP by referring to the object of the Act, pressed for maximum punishment. On the other hand learned advocate for the convict has prayed for leniency in sentence by referring the poor financial condition of the accused and the fact that accused is the sole bread earner of his family.
- From the record it appears that during trial, convict was in jail custody from 29.06.2015 till 17.10.2015. Considering the nature of the offence proved by the prosecution and the family background of the accused as narrated by learned advocate of accused, I am of the opinion that a sentence of 3 (three) Months Simple Imprisonment with fine of Rs. 2000/- (Two thousand) will meet the ends of justice for committing the offence punishable U/S 12 of POCSO Act, 2012.

- Accordingly convict Babor Bhuyan is sentenced to undergo S.I. for 3 (three) Months Simple Imprisonment with fine of Rs. 2000/- (Two thousand) i/d further SI of one month for the offence U/S 12 of POCSO Act, 2012.
- 29. Convict is entitled to the benefit of Section 428 Cr.P.C. for the period already undergone.
- 30. It is further provided that in the event of realization fine amount, the entire amount be paid to the informant as compensation for her minor daughter for the trauma suffered by the victim. Considering the fact of grant of compensation u/s 357 Cr.P.C, I am of the opinion that it is a not fit case for referring the matter to DLSA for granting further compensation U/S 357-A Cr.P.C.
- 31. A free copy of the Judgment be furnished to the convict.
- 32. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 33. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 19th day of January 2018 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX

1. Prosecution witnesses -

- P.W.1 Smt. Munu Bhuyan (Informant)
- P.W.2 (Victim)
- P.W.3 Smt. Bowli Bhuyan P.W.4 Sri Bhaikon Bhuyan
- P.W.5 Sri Haren Khanikar
- P.W.6 Sri Bimal Bhuyan
- P.W.7 Smt. Kamala Bhuyan
- P.W.8 SI Sunthorn Dhyam (I.O.)
- 2. <u>Defence witnesses</u>: None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Statement of the victim recorded U/S 164 Cr.P.C.
 - Exbt.3 Sketch map
 - Exbt.4 Medical report
 - Exbt.5 Charge-Sheet

Special Judge Sivasagar