# IN THE COURT OF THE SPECIAL JUDGE:::CACHAR,SILCHAR

Present: Sri K. Choudhury,AJS Sessions Judge Cachar, Silchar.

## Special (POCSO) Case No. 1/2015

Sukur Ahmed S/o Asadin Rahman PS & Dist. Karimganj, Assam .....Accused Vs **State of Assam** ......Complainant. Date of Evidence 27/04/15, 19/05/15, 24/06/15, 06/07/15, 27/07/15, 24/08/15 & 19/11/15 Date of Argument : 10/12/15 Date of Judgment : 21/12/15 Advocate appeared:

Sri Ikbal Bahar Laskar, Advocate appeared for the Accused

Sri S.D. Dutta, Ld. P.P., for the State of Assam.

#### **JUDGMENT**

- 1. Brief fact of the case of the prosecution as emanated from the written FIR is that on 15/12/14, at about 8 am, the daughter of the informant, here in below named as victim, completed her reading in a Mosque near Chandpur Part-II, the accused being the Imam of the Mosque, the accused detained her and allowed the others to leave the mosque and asked the victim to clean his room. While she started sweeping the room, the accused entered therein and bolted the door from inside. Thereafter the accused forcibly removed her clothes with ill intention and while started to rubbish her she raised alarm. The accused then opened the door and the victim came out. She was rescued by local people. Accused was confined and police was informed. FIR was lodged accordingly.
- 2. The FIR was registered as Lakhipur P.S. Case No. 284/14, U/S 342/323 IPC, and read with Section 8 of POCSO Act, 2012 and endorsed the same in the name of S.I. Sarbeswar Saikia to complete the investigation.

- 3. During investigation, the victim medically was examined and she alsogave statement before the MagistrateU/S 164 Cr.PC narrating the incident. completion of the investigation, I.O. submitted charge sheet U/S 342/323 IPC, read with Section 8 of the POCSO Act'2012.
- 4. On production of the accused and on furnishing the copies of relevant documents U/S 173(2) CrPC, to the accused the Ld. SDJM, Cachar, Silchar committed the offences.
- 5. This court after hearing both sides and on perusal of the materials on record framed charges U/S 342 IPC and Sec.8 of POCSO ACT'2012. The charges were read over and explained, to which he pleaded not guilty. Hence trial begun.
- 6. To prove the case prosecution examined as many as 12 witnesses including the doctor and the I.O. Most of the material witnesses turned hostile and they were cross examined by the prosecution. Defence plea is that the accused assaulted the victim for non -performance of homework / study. The accused was examined Under Sec. 313 CrPC. He claimed all the previous statements of the hostile

witnesses, as confirmed by the I.O. as false. According to him, at the material time he was an Imam of the mosque and the victim did not attend classes for 2/3 days and for her attention he canned her 2/3 times and for that victim went out crying. After 1/2 hours after that the inmates of the victim came to the mosque and raised hue and cry and he was rescued by one Nijam Uddin. Thereafter police came and took him.

7. To substantiate the same he examined two witnesses as DW.

#### 8. Points for the Determination:

- a) Whether, under the facts and circumstances of this case, the accused wrongfully confined the victim and thereby committed offence punishable U/S 342 IPC?
- b) Whether, the said facts and circumstances of this case, the accused committed sexual assault upon the victim and thereby committed offence punishable U/S 8 of the POCSO Act?

- 9. To decide this case, I have heard Ld. Counsel of both sides and perused the entire evidence on the record.
- 10. Ld. P.P. in view of the turning of the material witnesses as hostile has submitted that court is to appreciate the evidence on the record taking into consideration the evidence in its entirety for arriving at the decision.
- 11. On the contrary the Ld. Defence Counsel has submitted that the accused as a teacher has not committed any offence by caning for nonperformance of studies as come out in the evidence of all material witnesses.
- 12. Under such circumstances let the evidence be discussed:-

PW-10 is Dr. Monalisa Deb, According to her, she on 16/12/14 examined the victim girlwho andher accompanying mother disclosed that on 15/12/14 at around 8 a.m. the victim had gone to mosque nearby her house. Mulla (Imam) of the Masjid asked the victim to clean his room and while she was doing so the Mulla forcibly opened her garments and he (Mulla) himself opened his pent and forcibly dragged her,

but the victim somehow kicked the Mulla and was able to escape and ran away. Ext.2 is the medical report. Defence suggestion is that the history as recorded by the doctor was not actually narrated by the victim.

- 13. PW.9 being an SDJM deposed that on 17/12/14 he recorded the statement of the victim in connection with the relevant case. Ext.1 is the statement. He further deposed that before recording the statement he put some questions to test the intelligence with regard to the capacity of giving statement and the victim was found competent. He further deposed that the victim was asked to clean the floor of the Masjid at the time of attending the class and while she was cleaning, the accused pressed her chest and on being objected he bit her with fist and pressed her to the wall and also removed herpanty by gagging her mouth etc., but she somehow escaped. The learned SDJM in the cross denied that he reading the FIR led the victim to say accordingly.
- 14. PW.1 is the victim. PW.2 is the informant, the father of the victim. PW.3 is the mother of the victim. PW.4 is a minor girl. PW.5 is the close door neighbour of the victim. PW.6 is another minor girl. Of them except PW.3 all of them were declared hostile by the prosecution and their previous

statements as made before the IO u/s 164 Cr.PC and also made by PW 1 before the magistrate were brought in to the record in the cross examination.

- 15. PW.7 and PW.8 were also declared hostile by the prosecution. Similarly their previous statements were brought into the record by the prosecution in their cross examination. Although they were declared hostile by the prosecution for giving different story as disclosed before the police, Magistrate and also in the FIR, but it remains unrebutted that at the material time the victim being a minor was assaulted at the mosque by the accused. According to the hostile witnesses it was a mere assault fornonperformance of studies. But as per the FIR and previous statements confirmed by the Magistrate and the IO the accused at the material time confined the victim in a room and also sexually assaulted her.
- 16. Now, question arises, whether the statement made earlier before the Magistrate at the time of investigation and also before the police supported by history recorded by the doctor and also the FIR can be used as evidence. The victim in her evidence in examination in chief deposed that she failed to answer the question put by the accused and for that

she was asked to sweep the mosque and by this time all the students left the premises of the mosque and she swept the premises. She further deposed that accused did nothing more than that. She denied all the implicating statements made before the Magistrate. During cross by the defence, she stated that the accused for non-preparation of homework assaulted her with cane and accordingly she reported the matter to her mother and thus her father lodged ejhar. Therefore, it appears that the victim concealed the real facts stating that accused did nothing except asking to sweep the mosque and in the cross examination she stated that the accused caned her.

- 17. Accordingly other hostile witnesses also contradicted their previous statements.PW-8 being a declared hostile witness though denied his previous implicating statement, but stated that after arrival of the police maternal uncle of the victim gave statement in his presence to the effect that the accused committed rape on the victim and he asserted the same in the cross examination made by the defence.
- 18. Therefore, it clearly reveals that for mere assault the FIR was not lodged against the accused and whatever is written by the IO was actually stated to him. In his

examination in chief it is deposed that at the material time he hearing hue and cry went to the mosque and found the complainant and other were making hue and cry and the accused was inside the mosque. The complainant wanted to assault the accused asking him to come out. He further deposed that he managed to take away the accused from the mosque and he took the accused to the house of one Abdul Bari and on query the accused told that the accused assaulted the daughter of the complainant. It thus appears to be not believable at all that for mere assault without any injury there would be such a hue and cry. Had there been actual assaults by cane the doctor would have found the sign of injury.

19. DW-2 in his cross examination stated that about 20/30 people gharoed the mosque and the accused out of fear to save his life concealed himself in the mosque. Subsequently police took him. If it be so, it is difficult to believe that only for caning the victim for non performance of study the people of the locality would assemble in the mosque to attack a teacher. Had there been actually any caning it also would have been disclosed by the victim in her examination. That being so the above circumstances clearly indicate that the accused did something abnormal greater than that of mere wrong in the eye of the local people. The above deduction

gets support from the statement come out from the mouth of DW-1 who in his cross examination stated that at the material time 10/12 villagers gharoed the masjid and started howling and the accused out of fear and to save his life concealed himself inside the mosque and the people gathered there pulled him out and subsequently handed over to the police and subsequently the accused was released from the post of Imam. He further stated that allegation was brought against the accused was that accused was involved in many sexual acts. The above statement being comes out from the mouth of the DW it can be safely be arrived at that the statements as recorded by the IO and the Magistrate was actually disclosed by the material hostile before the IO and also by the victim before the Magistrate at the earliest opportunity, and therefore there is no reason to disbelieve the statement of the Magistrate and the IO. However, as the victim in her evidence uttered nothing against the accused with regard to sexual assault the accused is entitled to get benefit from the offence of charge of section 8 of the POCSO Act but the admitted assault, under the facts and circumstances of the case without any grave and sudden provocation, is an offence under the Section 352 of I.P.C.

20. In view of the above discussions on the evidence on the record and appreciation thereof, it is held the charges as framed u/s 342 IPC and Section 8 of the POCSO Act is not

proved beyond all reasonable doubts but prosecution case is only proved u/s 352 IPC beyond all reasonable doubts.

Accordingly, the accused is held guilty and convicted.

Heard the accused on the question of sentence.

21. Considering all aspect, I convict and sentence the accused u/s 352 of IPC to pay a fine of Rs. 500/- ( five hundred ) and i/d S.I. for 15 days.

22. The copy of this judgment be furnished to the accused as per provision of section 363 Cr.P.C.free of cost and a copy of the judgment be forwarded to the D.M.Cachar as per provision of section 365 Cr.P.C.

Bail bond stand cancelled.

Judgment is pronounced and delivered in the open court under my seal and signature on this 21st *day of December 2015*.

Dictated and corrected by

Sessions Judge Cachar

(K.Choudhury) Sessions Judge, Cachar.Silchar. Dictation taken & transcribed by K.Bhattacharjee, Stenographer

## IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR

## Spl. POCSO Case No.1 of 15

### **APPENDIX**

## (A) PROSECUTION WITNESSES: -

PW 1 -Smti. Bobi Begam,

PW 2 – Md.Nur Uddin,

PW 3 - Smti.Ibheam Begam,

PW 4 – Smti Najmin Akthart,

PW.5 - Smti Bebul Nessa

PW.6- Smti Saina Begam,

PW 7 – Sri Manik Mia,

PW 8 - Sri Nija Uddin Ali,

PW 9 – Sri Kiron Lal Baishanab

PW.10 – Smti Monalisa Deb, MO

PW.11 – Sri Sarbeswar Saikia

PW 12 – Dr. Y.K.Singha

**DEFENCE WITNESSES: -**

DW1- Hobibur Rahman

## DW.2-Ali Hussain

- (C) COURT WITNESSES: NIL.
- (D) PROSECUTION EXHIBITS: -
- Ext. 1 Statement
- Ext. 1 (1), Signatures of PW -9
- Ext. 2 Medical Report
- Ext. 2(1) -Signatures of PW 10
- Ext.2(2) Signature of PW.10
- Ext.2(3)— Signature of Dr. G. Das
- Ext.3-FIR
- Ext.3(1)— Signature of the then O/c.
- Ext.4- Sketch map.
- Ext. 5- Charge sheet,
- Ext.5(1), Signature of PW11
- (E) DEFENCE EXHIBITS: NIL.
- (F) COURT EXHIBITS: Nil
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Sessions Judge,

Cachar, Silchar.