# IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR SPECIAL POCSO CASE NO. 55 of 2017

Under section 8 of POCSO Act.
(Arising out Thelamara PS Case No. 106/2017)

#### State of Assam

–Vs–

Sri Tarun Paharia ... Accused Person

Present : Smti I. Barman,AJS, Special Judge, Sonitpur, Tezpur.

For the State : Mr. M.C. Baruah,

Special Public Prosecutor

For the accused : Smti Dulumoni Sinha, Advocate

Date of Argument : 14-03-2019.

Date of Judgment : 28-03-2019.

#### **JUDGMENT**

The genesis of the present case is that for last one and half month prior to the filing of the FIR dated 15-09-2017, accused Tarun Paharia taking advantage of absence of the informant at home, by offering money used to lure her 9 years old daughter and taking her to jungle attempted to commit misdeed on her by offering chocolate etc. Lastly, on 13-09-2017, at about 3 p.m., while the informant was not at home, accused coming to her house, had taken her daughter to the nearby jungle and asked her to open her wearing apparels but somehow her daughter fled away and informed the matter.

- 2. On receipt of the FIR (Ext.1) on 15-09-2017 from the informant (PW1), the victim's mother, Thelamara P.S. Case No. 106/2017 u/s 8 of POCSO Act was registered and launched investigation of the case. During investigation, the Investigating Officer (PW 8) recorded the statement of the witnesses, sent the victim for medical examination, got her statement recorded u/s 164 Cr.P.C. and on completion of investigation having found materials, laid chargesheet against the accused Tarun Paharia u/s 8 of POCSO Act.
- **3.** On appearance of the accused person before this Court, after furnishing the copies of the documents as required u/s 207 of Cr.P.C. and having heard both parties, my learned predecessor, framed charge u/s 8 of POCSO Act against the accused Tarun Paharia and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.
- 4. To substantiate the case, prosecution examined as many as eight numbers of witnesses. On closure of the prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. wherein the accused denied all the incriminating evidence that emerged against him and taking the plea of enmity stated that about 8 years back he called a meeting upon the informant as she used to play card with children for which she got ashamed and threatened him that she would see him in future. Hence, out of revenge filed the present case.
- **5.** I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.
- 6. The point for decision in this case is that -
  - (1) "Whether the accused Tarun Paharia on 13-09-2017 at around 3 p.m. at village Borati under Thelamara Police Station committed sexual assault on the victim Miss "X", a minor girl aged about 9 years, and thereby committed an offence punishable under section 8 of POCSO Act?

### Reasons, Decisions and reason for decision.

**7.** Before entering into discussion of the oral evidence, let it be seen whether the victim is a child as defined in section 2(d) of the POCSO Act. Here in this case, as per evidence of the victim and her parents, the victim was 9

years old at the time of alleged offence. Age of the victim girl is not disputed in this case and as such I unhesitatingly held that in any circumstances the victim was a child as defined in section 2 (d) of POCSO Act.

- **8.** Now, the question is whether the accused Tarun Paharia committed any offence on the victim child. In this respect let me travel through the evidence adduced by the prosecution side.
- 9. PW 1 is the informant as well as the mother of the victim. She deposed that on 13-09-2017 at about 3 p.m. her 9 years old victim daughter a student of class VI reported her that accused committed rape on her while she (PW1) was not at home. The victim told her that the accused calling her to the jungle near her house had shown her obscene video in mobile and also had shown his sexual organ. Hearing about the incident, she informed the matter to the VDP secretary but as he did not response, hence, she filed the FIR on 15-09-2017. She proved the FIR as Ext.1.

During cross, she stated that the victim also reported the incident to her father (PW2) at night. The house of the accused is situated at a difference of two houses from her house and in between the place of occurrence i.e. the jungle and her house, there are four houses. The residence of Hemanta Nath, Anil Paharia, Bijaya Devi, Sunu Munda is near to the place of occurrence. She deposed that she informed the matter to VDP secretary Pranjit Saikia. According to this witness, the accused is her cousin brother and he resided with his wife and three children but she did not report the incident to the wife of the accused. She admitted that a meeting was convened against her on complain of the accused alleging committing misdeed and polluting environment and in the meeting she confessing her guilt assured not to do such misdeed in future. She denied the suggestion that in the said meeting in presence of villagers, she threatened the accused to face dire consequence. She admitted that they refused to got examine the victim medically.

**10.** PW 2, the father of the victim girl, stated that in day time he usually used to reside in his shop which is about 14 km away from his house. He testified that on 13-09-2017 in absence of his wife, accused coming to his

house, lured his daughter by giving money, chocolate etc and calling his daughter along with one Gita to the nearby jungle, showed them blue film on mobile. He further stated that the accused by opening his pant had shown his private part to his daughter. Hearing about the incident from his wife and the victim, on 15-09-2017 he lodged the FIR.

During cross he stated that on that day after returning home, he came to know about the incident but he did not report to the neighbours that accused called his daughter by luring to give chocolate and money.

**11.** PW 3 Smt. Bijaya Devi, the neighbour turned hostile. She stated that only after arrest of the accused, she came to know about the incident. She stated that on being asked by police as to whether she knew about the incident, she replied that she knew nothing.

During cross by defence she stated that there is enmity in between the informant and the accused for convening a village meeting by the accused against the informant.

- 12. Close on the heels of the evidence of the informant, PW 4, Sri Pranjit Saikia, testified that the informant coming to him reported that accused had shown some obscene photo on his mobile to the victim girl. She also reported him that the accused offering money and chocolate, took her daughter to jungle and asked her to open her pant and when the accused hold her hand, the victim fled away by biting the hand of the accused. The informant also told him that since last  $1\frac{1}{2}$  years, the accused attempted to commit misdeed to the victim girl and a few days back the accused taking the victim to jungle, had shown his sexual organ and obscene photo. Hearing the incident, he advised the informant to wait for 2/3 days and then to take help of court.
- 13. The star witness of the case i.e. the victim (PW 5) deposed that on 13-09-2017 when she was at home at around 2.30/3 p.m. accused called her along with one Gita Devi to the jungle which is situated infront of the house of her grand father and asked her to open her pant, but she refused. Then the accused opened his pant and thereafter when attempted to open her pant also, she by biting on his hand fled away. She further deposed that the

accused asked her not to report the incident to his wife. She stated that after that incident, again the accused asked her to open pant and himself opened his pant. She proved her statement u/s 164 Cr.P.C. as Ext. 2.

During cross, she stated that her grand father is a deaf one whose home is situated near the place of occurrence and when she raised alarm, he might not hear. She stated that she did not report the incident occurred after 13-09-2017 to anybody including her mother. She further stated that at the time of incident Gita Devi, aged about 11 years, was with her and her mother enquired Gita Devi about the incident. She stated that she raised alarm while the accused dragged her towards jungle but due to dragging, she did not sustain scratches. She denied of being tutored by the villagers.

**14.** PW 6, the then learned SDJM(S),Tezpur, deposed that on 15-09-2017 she recorded the statement of the victim u/s 164 Cr.P.C. vide Ext.2.

During cross, she stated that though she recorded the statement of the victim after giving reflection time but she did not mention how much time was given to the victim for reflection.

**15.** PW 7 Hemanta Nath also turned hostile. He stated that he knew nothing about the incident.

During cross by defence, he stated that in the year 2012 a village meeting was convened alleging involvement of the informant in immoral activities and in the said meeting the informant gave an undertaking in writing that she will not indulge in such immoral activities in future. In the said meeting when the accused cautioned the informant not to do such act in future, an altercation took place between the accused and the informant.

**16.** PW 8 the Investigating Officer, deposed that on 15-09-2017 on receipt of an FIR from the informant, he registered the case being Thelamara PSCase No. 106/17 u/s 8 of POCSO Act and himself investigated the same. During investigation, he visited the place of occurrence, recorded the statement of the informant and victim and other witnesses, drew the sketch map of the place of occurrence vide Ext.3, sent the victim for medical

examination, got recorded the statement of the victim u/s 164 Cr.P.C., arrested the accused Tarun Paharia and on completion of investigation, submitted chargesheet against the accused u/s 8 of POCSO Act vide Ext. 4.

PW 8 confirmed the statements of hostile witness Bijaya Devi (PW 3) and Hemanta Nath (PW7) made before him.

During cross, he stated that in uniform he recorded the statement of the victim in her house while the WPC Manju Kumari was in civil dress. He stated that he has not examined Gita as witness. He also did not notice any injury in the hand of the accused.

17. The evidence of the PWs reveals that the other PWs had not seen the incident. Victim's parents knew about the incident from the victim. So, the evidence of the victim child forms the pivot around which revolves the entire case of the prosecution is relevant in this case.

The evidence of the victim reveals that on 13-09-2017 at around 2.30 p.m. accused Tarun Pasharia called her to nearby jungle infront of the house of her grand father and asked her to open pant and when she did not do the same, the accused himself opened his own pant and also attempted to open her pant but then by biting the hand of the accused, she fled away. Her further evidence is also that accused asked her not to told about the incident to his wife. Testimony of her parents, PW 1 and PW 2, is that on 13-09-2017 at around 3 p.m. the accused calling the victim to the jungle near their house, had shown her some obscene video (cinema) on his mobile and also had shown his sexual organ. Though the victim in her statement u/s 164 Cr.P.C. Ext.2, stated that the accused had shown obscene cinema in his mobile but during evidence she remained silent regarding showing cinema. The informant (PW 1) also stated that hearing about the incident on the very day, she informed the matter to VDP secretary Pranjit Saikia but as he did nothing, hence, after 2 days she lodged the FIR. The said Pranjit Saikia was examined as PW 4. Corroborating the evidence of the informant, he stated that informant coming to his house reported that accused had shown some obscene video to her daughter on his mobile and luring her daughter by giving money, chocolate etc., took her to jungle and asked to open her pant and when the accused hold her hand, she fled away by biting the hand of the accused. The informant also reported him that accused had shown his sexual organ and obscene photo in his mobile to her daughter. Hearing the incident, he advised her to take help of court after waiting 2/3 days. The evidence of PW 1, PW 2 and PW 4 are found corroborative in nature. In this case, there is delay of two days in filing the FIR. The evidence of PW 4 shows that as per his advice, the informant awaited for 2 days and then lodged the FIR. Hence, in my view this delay of two days in a case of sexual harassment on a child is not fatal to the prosecution.

Other two witnesses PW 3 and PW 7 turned hostile during trial. In 18. this case, the accused in his statement u/s 313 Cr.P.C. took the plea that about 8 years back a meeting was held on the complaint of the accused against the informant for playing card with children for which she got ashamed and threatened him that she would see him in future and hence filed this false case. Holding meeting against the informant is admitted by the informant but she denied the fact of threatening the accused to face dire consequence. Corroborating the evidence of PW 1, the hostile witness PW 7 during cross by defence also stated that a meeting was held in the year 2012 against the informant for involvement in immoral activities where the informant gave an undertaking that she will not indulge in such immoral activities in future and in the said meeting when the accused cautioned the informant not to do such activities, an altercation took place between them. PW 7 also clarified that he attended the said meeting. This hostile witness also did not state that in the said meeting the informant threatened the accused to see in future. Another hostile witness (PW 3) also stating about the meeting, told that for that reason, they had enmity. In absence of evidence, defence plea that the informant threatened the accused to see in future stands failed. Moreover, the said meeting was held in the year 2012. It is not believable that after long lapse of about 6/7 years a mother would set her daughter 9 years old daughter with such an allegation of sexual harassment.

- 19. Though there are some ommissions in the evidence of the victim in her statement u/s 164 Cr.P.C. and in deposition regarding showing obscene cinema in mobile but the evidence of the victim lead assurance to the fact that the accused taking her to the jungle asked her to open her pant and when she did not open, he himself opened his pant and thereby exhibits his private part to her. As such, those minor discrepancies does not nullify the material fact that the accused asked her to open her pant and exhibited his private part to the victim by opening his pant. During cross defence could elicit nothing tangible to discredit her version on this material point. Probative value of her evidence remains unshaken throughout her case on this material particular. Moreover, by and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. In this case, the victim being an infant child of 9 years only, so she cannot be expected to possess a photographic memory of everything of the incident and those minor discrepancies does not wipe of the reliable part of her evidence on record.
- **20.** Further as per evidence of the victim and her parents, the incident occurred in the nearby jungle infront of their house whereas the learned defence counsel vehemently argued that as per evidence of hostile witness PW 7, there is no jungle near their house but the sketch map, Ext. 3 indicates existence of jungle in front side of the house of the informant which is other side of the road. The learned defence counsel also pointed me that as per evidence of the victim she by biting the accused ran away from the place of occurrence whereas evidence of the I.O. shows that the accused sustained no injury on his hand and it creates doubt about the veracity of her evidence. In this case, the FIR was filed after two days and accused was also arrested after two days of the incident. There is also no evidence that how much force the victim used in biting the accused of the age of 48 years. So, for not finding/sustaining bite mark after two days, it cannot be said that she deposed falsely.
- **21.** In this case, the victim stated that at the time of incident one Gita Devi, D/O Lotha @ Rajendra was also with her when the accused took her to

jungle and committed the offence. Said Gita was not examined by the Investigating Officer the reason best known to him. As per the evidence of the victim she does not know her title. In such circumstances, she could not be examined as court witness in absence of her title and address. It is well settled that "Testimony of victim in case of sexual offence is vital and unless there are compelling reason which necessitates looking for corroboration of her statement, the court should find so difficulties to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspire confidence and is found to be reliable. Seeking corroboration of statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury." (State of Punjab Vs. Gurmit Singh, 1996 Cr.L.J. 1728). In this case, the victim appears to be a witness of truth and I find no reason to discard the evidence of the victim without examining Gita Devi for corroboration.

- 22. The unimpeachable evidence of the child, coupled with the testimony of her parents and VDP Secretary (PW 4) reveals that the accused committed sexual harassment on the victim by exhibiting his body by opening pant and also asking her to open her pant. There is nothing for not accepting the evidence of the victim. The evidence of the victim is found spontaneous and trustworthy without inviting any suspicion and tutored and I am of the view that the act of the accused amounts to sexual harassment attracting the ingredients of Section 11 of POCSO Act punishable u/s 12 of POCSO Act.
- 23. Situated thus, the conclusion which is irresistible is that prosecution side succeeded in establishing that the accused Tarun paharia committed sexual harassment on the victim by showing his sexual organ and asking her to open her pant.
- **24.** In this case, though the charge is framed u/s 8 of the POCSO Act but the offence u/s 12 of POCSO Act is well established from the facts and circumstances of the evidence on record. As section 12 of POCSO Act relates to same nature of offence as of section 8 of POCSO Act and the punishment prescribes in Section 8 of the Act is greater in degree than section 12 of the

Act, hence, I am of the view that alteration of charge is not required. Accordingly, accused is found guilty of the charge u/s 12 of POCSO Act and convicted him accordingly.

- 25. In this case in hand, sexual harassment was committed on a 9 year old girl, helpless and vulnerable both physically and psychologically. Though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. In the instant case, the 9 year old girl, was supposed to spend time in cheerfulness, with her dignity. The young girl, with efflux of time, would grow with such memories. She understood nothing what the accused was doing with her. The convict being a fully matured man of 48 years and father of children was expected to protect her from abuse, but instead he himself abused her childhood and sexually harassed her. He committed a serious offence against a minor.
- I have heard the accused Tarun Paharia on the point of sentence. His statement is recorded where he stated that he is a daily wage earner and is to look after his family out of his meagre income and prayed for leniency. On the other hand, the learned Special Public Prosecutor submitted that the offence being heinous, the accused should not be dealt with leniency. In the facts and circumstances of the case and the nature of the offence committed by the accused being a full matured person of 48 years on a very tender aged girl, in my opinion, he could not be given the benefit of probation.
- I gave my anxious consideration on the aspect of quantum of sentence. Sentencing for any offence has a social goal, sentence is to be imposed in respect of the offence and the manner in which the offence has been committed. The purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him created a concavity in the social goals.
- **28.** Considering all aspects, I sentence the convict Tarun Paharia to undergo Rigorous Imprisonment for 1 (one) year and also to pay a fine of Rs. 5,000/- (Rupees five thousand), in default to undergo Rigorous

Imprisonment for another 2 (two) months for the offence punishable u/s 12 of POCSO Act.

The fine amount on realization be paid to the victim.

The period of detention already undergone by the accused shall be set off against the terms of imprisonment as per provision of section 428 of Cr.P.C.

- **29.** Let a free copy of the Judgment be furnished to the convict.
- **30.** Given under my Hand and Seal of this Court on this the **28<sup>th</sup> day of March, 2019.**

(I.Barman) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(I.Barman) Special Judge, Sonitpur,Tezpur.

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno.

#### **Prosecution witnesses.**

PW 1 : Mother of the victim.
 PW 2 : father of the victim.

3. PW 3 : Bijaya Devi4. PW 4 : Pranjit Saikia5. PW 5 : victim

6. PW 6 : SDJM(S), Tezpur. 7. PW 7 : Hemanta Nath

8. PW 8 : I.O.

## **Exhibits.**

Ext. 1 : FIR

Ext. 2 : 164 Cr.P.C. statement of the victim

Ext. 3 : Sketch map

Ext. 4 : Charge sheet

(I.Barman) Special Judge, SONITPUR: TEZPUR