IN THE COURT OF THE SPECIAL JUDGE AT JORHAT

Present: Sri Madhurjya Narayan, AJS

Special Judge, Jorhat

SPECIAL CASE NO. 68 OF 2018 (G.R. Case No. 80 of 2018) Garamur P.S. Case No. 27 of 2018

State of Assam

-Versus-

Sri Robin Mudoi @ Babul Mudoi, Son of Late Dadhi Mudoi, Resident of Krishna Nagar, Near Garamur College, P.S. Garamur,

District-Majuli. <u>Accused</u>

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat

For the Accused: Sri Deep Ranjan Chetia & Sri N.G. Mudoi,

Learned Advocates, Jorhat

CHARGE FRAMED UNDER SECTION 354 [A] OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 06-09-2018

Date of prosecution evidence: 28-09-2018; 01-11-2018; 02-11-2018;

06-12-2018 & 15-05-2019

Statement of Accused

Recorded on : 27-06-2019

Date of Argument : 31-07-2019

Date of Judgment : 14-08-2019

<u>JUDGMENT</u>

- 1). The prosecution story, in brief, as stated in the ejahar dated 13/07/2018, lodged by the victim girl, [hereinafter referred as (X) in order to screen her identity], is that on 12/07/2018, around 12 noon, she went for her tuition class at her school, held during summer vacation. After the tuition class, accused Sri Robin Mudoi @ Babul Mudoi, who was the Headmaster of her school, forced her and her friend Mouchumi Bora to visit his residence, and accordingly they went to his house in his bike. There, the accused person confined her friend in one room and in another room, he gagged the mouth of the victim, forcefully removed her clothes and attempted to commit rape on her. Somehow, victim [X] managed to rescue herself and fled away from the house of the accused person.
- **2).** On receipt of the aforesaid F.I.R. by the Officer-in-charge, Garamur P.S., the same was registered as Garamur P.S. Case No. 27/2018 under Section 354 [A] of IPC. The Officer-in-charge, Garamur P.S. S.I. Sri Ranjan Doley himself took up investigation of the case.
- **2 (1)** During the course of investigation, the I.O. visited the place of occurrence, prepared Sketch Map of the same, recorded statements of the witnesses and forwarded the accused Sri Robin Mudoi @ Babul Mudoi after arresting him. He also got the statements of the victim recorded in the Court under Section 164 of Cr.P.C. Then on completion of investigation, the I.O. laid charge-sheet against accused Sri Robin Mudoi @ Babul Mudoi to stand trial in the Court under Section 354 (A) of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012.
- 3). On production of the accused person before this Court, my learned predecessor-in-court, after furnishing the copies of relevant documents and upon hearing the learned counsel for both sides on the point of consideration of charge and perusing the relevant materials, finding a prima-facie case under Section 354 [A] of IPC read with Section 8 of POCSO Act, 2012, framed formal

charge there under against the accused person. Particulars of accusations of above charge on being read over and explained to the accused, he pleaded not guilty and claimed to be tried.

- **4).** To bring home the charge, the prosecution examined as many as **09 [nine]** witnesses including the victim, her friend Miss Mouchumi Bora and her father. Further, the prosecution side exhibited the statement of the victim [X] recorded under Section 164 of Cr.P.C. as Exhibit-2, statement of Miss Mouchumi Bora recorded under Section 164 of Cr.P.C. as Exhibit-3, the ejahar as Exhibit-1 and the Sketch Map of the place of occurrence with index as Exhibit-4.
- on closure of the prosecution evidence, statement of the above named accused was recorded under Section 313 of Cr.P.C. in respect of the incriminating circumstances that surfaced against him in the evidence on record. No defence evidence was led in the instant case.
- 6). I have heard arguments advanced by the learned counsel for both sides. I have also scrutinized the entire evidence of witnesses as well as all relevant materials including the exhibits on record.
- **6 (i).** Learned Special P.P. Sri Muhidhar Dutta submitted that there are sufficient materials on record to prove the guilt of the accused person beyond reasonable doubt and as such, he be dealt with. On the other hand, learned Defence Counsel Sri Deep Ranjan Chetia, argued that prosecution evidence lacks credibility and reliability. And as such, the accused be acquitted of the charge.

7). <u>POINTS FOR DETERMINATION</u>:-

Whether on 12/07/2018, around 12 noon, at Krishna Nagar, under Garamur P.S., the above named accused person:

[i] at his house, used criminal force upon the victim 'X', with intent/knowledge to outrage her modesty and thereby committed an offence punishable under Section 354 [A] of IPC?

[ii] committed sexual assault upon the victim 'X', who was aged above sixteen years and below eighteen years and thereby committed an offence punishable under Section 8 of POCSO Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

- 8). **PW-1/victim** 'X' deposed that the accused person was the Headmaster of her school and on the day of the incident, around 9 a.m., she went to her school for attending tuition class. That she found that the accused person wanted to take one of her friends Miss Mouchumi Bora to his house, to show the same. That he also asked her to visit his house. At first, she was not willing to go and only on being insisted by him, she went to the house of the accused person with her friend Mouchumi Bora. That at his house, the accused person told that his wife is not present and he brought them to pamper. That she then got scared. That the accused person sent Mouchumi Bora to prepare tea for them and took her to other room of the house and kissed her on her cheek. That the accused person asked her to sit on his lap and when she refused to do so, he caught her hand and dragged her to make her sit on his lap. That he then tried to remove her clothes. That PW-1 somehow freed herself from the clutches of the accused person and went out of his house, without informing her friend Mouchumi Bora. That she reached Garamur Tin-Ali but did not board any vehicle as she was scared. That she met her uncle Sri Gobinda Doley, who took her to her house.
- **8 (i).** During cross-examination, PW-1 stated that they reached the house of the accused person around twelve noon and she reported the incident to her mother first. That she was not allowed to make hue & cry by the accused person at the time of the incident and she came out of his house by opening the door. That on the day of the incident, only she and Mouchumi Bora were present at the school. That she told the accused person that she would take tuition at the school only. That her family members and villagers told her to lodge a case against the accused person.

- **9).** From the evidence of PW-1/victim, it is seen that at the time of the incident, Miss Mouchumi Bora was present with her and on that day, she went to the house of the accused person only on his insistence. Moreover, PW-1/victim, during cross-examination, stated that she told the accused person that she would take tuition at the school only. Aparently, Miss Mouchumi Bora is a vital witness of this case. As **PW-3 Miss Mouchumi Bora**, deposed that she and the victim/PW-1 went to the house of the accused person, to take tuition class and they told the accused person that they would go to his house for tuition. This version of PW-3, as reveals, is contradictory to what has been deposed by the victim as PW-1.
- **10).** PW-3 further deposed that after reaching the house of the accused person, he asked her to prepare tea and so she went to prepare tea. That when she brought tea, she did not find the victim/PW-1 at the house and at that time, the accused person went to take bath. That on being asked, the accused could not say how the victim/X went out and then she also left the house of the accused person.
- **10 (i).** During cross-examination, PW-3 stated that she had visited the house of the accused person earlier. Under the circumstances, the deposition of PW-1/victim that the accused wanted to take her friend Mouchumi Bora to his house, in order to show his house, is contradictory. PW-3, during her cross-examination, further stated that she cannot say whether the victim visited the house of the accused person prior to the incident. That the accused person did not misbehave her earlier and on the date of the incident, other students were present at the school. PW-1/victim, however, deposed that on the date of the incident, only she and her friend Mouchumi Bora were present at the school.
- **11).** PW-3/Miss Mouchumi Bora further during her cross-examination stated that while preparing tea, she did not hear any hue & cry of the victim and she came to know about the incident, only on the next day. Now, the victim in her ejahar/Exhibit-1 stated that before she could shriek, accused person gagged her

mouth. However, from the description of the incident by the victim as PW-1 that the accused asked her to make her sit on his lap and on her refusal, he caught her hand and dragged her to sit on his lap and then tried to remove her clothes, it seems very unlikely that she had been prevented from shouting or her mouth had been gagged. Moreover, as per the deposition of both the victim/PW-1 and PW-3/Miss Mouchumi Bora, latter was in the kitchen of the accused person at the time of the alleged incident. PW-3, during cross-examination, stated that the kitchen was located near the drawing room of the house of the accused person. **PW-5/Smt. Dipali Bhuyan** deposed during cross-examination that the drawing room and the kitchen room are not separated by any wall.

- **12).** PW-1/victim also deposed that on the date of the incident, before going to the house of the accused person, she was given a dress from the house of Miss Mouchumi Bora/PW-3. Aforesaid Mouchumi Bora/PW-3 also deposed that before going to the house of the accused person, they went to her house as victim 'X' asked her for some clothes and accordingly, she gave her clothes and the victim 'X' then changed her clothes and thereafter they went to the house of the accused person.
- Bora/PW-3. She deposed that at the relevant time, victim/PW-1 came to her house with her daughter/PW-3 and changed her clothes and after that, she went to the house of the accused person with her daughter/PW-3. That the victim again came back to her house with one person, around 3 p.m., and after changing her clothes, wore her own clothes and left for her house without saying anything to her. That she came back within one hour of going to the house of the accused person. That on being asked, the victim did not tell why she came without her daughter/PW-3.
- **13 (i).** During cross-examination PW-4 stated that she does not have any personal knowledge of the incident.

- **14). PW-2/Sri Nobojit Doley** is the father of the victim/PW-1. He deposed that on the day of the incident, he had told his daughter to go to the school for taking her tuition class but she was not willing to go. That his daughter/PW-1 returned back home after 3 p.m. with his nephew Sri Biren Kuli and she was shivering out of fear. That he made query, but she/PW-1 did not tell him anything. That his wife told him that the victim had told her that the accused person tried to rape her. That in the meantime, people from their village as representatives of Missing Organization, told him that he should lodge a case and on the next day, his daughter/PW-1 lodged the case before the police.
- **14 (i).** During cross-examination, PW- stated that there were 6-7 persons from the Missing Organization, who accompanied them to the police station. That they directed him to lodge the case before the police after the incident. That they had a meeting before they went to the police station for lodging the ejahar. PW-2 further during cross-examination stated that the victim/PW-1 did not tell him anything about the incident and he does not have any personal knowledge about the incident.
- **PW-5/Smt. Dipali Bhuyan** is a clerk of the school, of which the victim/PW-1 is a student. She deposed that she came to know about the incident from Miss Mouchumi Bora/PW-3. However, the latter as PW-3, did not depose that she reported any incident to Smt. Dipali Bhuyan. Evidence of PW-5 on the incident is accordingly hearsay and inadmissible. PW-5, during her cross-examination, stated that she was also a student of the school where she has been working presently and the accused used to teach her during her school days. That as per her knowledge, accused is a good person and the offence alleged against him is false. PW-5 during cross-examination further stated that on the date of the incident, accused person called her for her official work and when she went there, both the students were present.

- **16). PW-6/Sri Bijay Dutta,** as deposed by him, was a tenant of the accused person at the time of the incident. Said witness deposed that he heard about the incident only on the next day as he was on duty at the relevant time.
- **17). PW-7/Sri Krishna Kallul Mudoi** is the son of the accused person. He deposed that on the date of the incident, he reached his house around 3 p.m. and he did not notice any abnormality at his house.
- **17 (i).** During cross-examination, PW-7 stated that though he reached his house at 3 p.m. he told his father that he would come at 2 p.m.
- **18). PW-8/Sri Bikash Borah** is the Assistant Teacher of Luit High School. He deposed that on the day of the incident, he was at his school and on that day, he also went to the house of the accused person. That on the next day, he could come to know that the accused person had done some indecent behaviour with the victim/PW-1 who is a student of their school.
- **18 (i).** During cross-examination, PW-8 stated that on the date of the incident, he was called by the accused person to his house without giving any specific time to visit the same. That he did not hear anything against the accused person and the latter takes tuition class at his residence.
- **19). PW-9/Sri Ranjan Doley** is the I.O. and as deposed by him, prior to the receipt of the ejahar/Exhibit-1, telephonic information had been received at the police station regarding the incident, which was entered in the General Diary Register vide G.D. Entry No. 220 dated 13/07/2018. As per the deposition of I.O./PW-9, after entering the G.D. Entry, he visited the place of occurrence and examined some witnesses in connection with the case, drew Sketch Map of the place of occurrence with index. That thereafter, the victim/PW-1 lodged the ejahar/Exhibit-1. So, what transpires is that on the basis of the G.D. Entry No. 220 dated 13/07/2018, investigation already commenced. As such, the G.D. Entry No. 220 dated 13/07/2018 is the information first in point of time and so,

the ejahar/Exhibit-1 is hit by Section 162 of Cr.P.C. However, prosecution did not bring on record the extract copy of the said G.D. Entry nor took any steps to call for the relevant G.D. Entry Register.

- **19 (i).** The I.O./PW-9 during cross-examination stated that the place of occurrence is the house of the accused person. Exhibit-4 is the Sketch Map of the place of occurrence with index and the same reveals that there are five rooms at the house of the accused person, but the prosecution failed to bring on record as to in which room the alleged incident had taken place.
- 20). On behalf of the accused, it has been submitted that he is a respectable person of the locality and involved in various social organizations and that he has been falsely implicated in the case. PW-5/Smt. Dipali Bhuyan during cross-examination stated that as per her knowledge, accused is a good person and the offence alleged against him is false. It has been further submitted on behalf of the accused person that the case had been lodged out of grudge and in conspiracy with the representatives of the Missing Organizations. PW-1/victim during cross-examination stated that the accused person used to teach Science and sometimes he used to scold and assault them for not doing well in their studies, but she did not object for the sake of her study. PW-3/Miss Mouchumi Bora during cross-examination stated that the victim secured less marks than her in the examination. The victim as PW-1 during cross-examination stated that the representatives of TMPK, MMK met them before lodging the ejahar/Exhibit-1, and they also told her to lodge the case. PW-2/Sri Nobojit Doley, father of the victim/PW-1, also deposed that the representatives of their Organizations, told him that he should lodge a case after the incident.
- **21).** Further the victim as PW-1 deposed that on the day of the incident, on her way back from the house of the accused person, she met her uncle Sri Gobinda Doley, who took her to her house. But her father PW-2/Sri Nobojit Doley, deposed that on the date of the incident, his daughter/PW-1 returned home after 3 p.m. with his nephew Sri Biren Kuli. Prosecution, however, failed to

examine either Sri Gobinda Doley or Sri Biren Kuli, who would have been vital witness of the case, nor any explanation had been given for their failure to examine them.

- **22).** From the discussions so made herein before, it is revealed that besides the victim/PW-1, her friend Miss Mouchumi Bora/PW-3 was present at the house of the accused person at the time of the incident. However, variations and contradictions in the evidence of the victim/PW-1 and PW-3, as already discussed above, creates a doubt in the prosecution case. Failure on the part of the prosecution to examine vital witnesses, namely, Sri Gobinda Doley and Sri Biren Kuli is a serious loophole on the part of the prosecution. Further, prosecution either by way of the Sketch Map/Exhibit-4 or through the evidence of the witnesses, failed to give a clear picture of the place of occurrence, which is another loophole on their part. The evidence of PW-5/Smt. Dipali Bhuyan that on the date of the incident, on being called by the accused person for some official work, she visited his house and had seen both the students present there, also creates a doubt in the prosecution case.
- **23).** In the light of the discussions so made hereinbefore and taking the evidence on record in its entirety, it is found that the prosecution failed to prove its case against the accused person beyond reasonable doubt. Accordingly, he is found not guilty of the charges so brought against him.
- **24).** In the result, accused **Sri Robin Mudoi** @ **Babul Mudoi** is **acquitted** of the charges under Section 354 [A] of IPC read with Section 8 of POCSO Act, 2012, levelled against him and he is set at liberty forthwith.
- **25).** Accused is on bail. The bail bond of accused is extended for another **06 [six]** months from today as per provision of Section 437-A Cr.P.C.
- **26).** Given under my hand and seal of this Court on this **14th** day of **August 2019**.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl-cum-informant of the case.
PW-2	Sri Nobojit Doley, father of the victim.
PW-3	Miss Mouchumi Bora, friend of the victim.
PW-4	Smt. Konmai Borah, mother of Miss Mouchumi
	Borah/PW-3.
PW-5	Smt. Dipali Bhuyan, Clerk of Sri Luit High School.
PW-6	Sri Bijoy Dutta, private service.
PW-7	Sri Krishna Kallul Mudoi, son of the accused person.
PW-8	Sri Bikash Borah, Assistant Teacher of Luit High
	School.
PW-9	Sri Ranjan Doley, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Ejahar
Exhibit-2	Statement of the victim/PW-1 under Section 164 Cr.P.C.
Exhibit-3	Statement of PW-3/Miss Mouchumi Bora under Section 164 Cr.P.C.
Exhibit-4	Sketch Map of the place of occurrence with index
Exhibit-5	Charge-sheet

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)