

Present : Shri C. Das

Judge, Special Court Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.113/2018

u/s 8 of POCSO Act

State

-versus-

Sri Dhruba Kalita

..... Accused

Appearance:

For the State: Mr. R. Chetry, Public Prosecutor, Baksa

For the accused: Ms. M. Kakati, Advocate

Date of evidence recorded: 28.2.19, 3.5.19, 20.6.19

Date of argument : 6.9.19
Date of judgment : 20.9.19

JUDGMENT

- 1. The case of the prosecution briefly, is that on 11.10.18, the complainant/victim (name withheld) lodged a FIR before the Officer-in-charge of Mushalpur police station, alleging inter-alias that on 6.10.18, at about 2 pm., while she went to bring back her goat, the accused on the road of Ulubari pather, caught her hand and pulled her forcibly towards paddy field where he tried to molest her. Due to her hue and cry, local public rushed to the spot. As such, the accused fled away there from on his bike.
- 2. The police accordingly, registered the Mushalpur PS. Case No.108/18 and took up the due process of investigation. During the investigation, I/O visited the place of occurrence, examined the witnesses including the victim and drew up the sketch map of the place of occurrence. The victim was sent for medical

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examination but she refused it. I/O arrested the accused and recorded the statement of the victim u/s 164 CrPC. At the end of investigation, I/O having found a prima-facie case well established, submitted the charge-sheet against the accused person to face trial in the court.

- 3. The accused when appeared in the court in response to issue of process, and he was furnished with the relevant copy of the case immediately. After hearing of both the sides and on perusal of material on record, the charge u/s 8 of POCSO Act was framed against the accused. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried.
- 4. The prosecution during the trial, examined as many as, 4(four) witnesses including I/O to support its case. In the statement recorded u/s 313 CrPC., the accused denied all incriminating circumstances appeared against him in the evidence. The accused however, declined to adduce any evidence in defence. The argument of the parties was heard at length.

POINT FOR DETERMINATION:

5. Whether on 6.10.18 at about 2 pm., at Ulubari-Pathar, under Mushalpur police station, the accused committed sexual assault to the victim girl who is minor daughter of informant Sri Gagon Sarma, by touching and pulling her hand with sexual intent;

DECISION AND REASON THEREFORE:

- 6. At the out set of argument of the case, learned Public Prosecutor, Baksa submitted that the prosecution examined altogether 4 witnesses including I/O and all of them supported and corroborated each other on material point of the prosecution story. He submitted that there is no ground to disbelieve the version of the victim witness who is a child within the meaning of POCSO Act. Moreover, she was corroborated by the informant and other witnesses. The evidence of the prosecution shows elements of section 8 of POCSO Act against the accused and thus, the witnesses has able to bring home the charge against the accused and as such, he is liable to be convicted.
- 7. On the other hand, learned counsel for the accused submitted that the accused was known to the victim girl prior to the occurrence and as such, the



victim came to snap a photograph with the accused. There was no such scuffle that took place between the accused and the victim with some sexual intent. Therefore, the evidence of the victim as well as, other witnesses does not able to bring home the charge against the accused u/s 8 of POCSO Act and as such, the accused is entitled to be acquitted from the charge of the case.

- 8. After hearing the above submissions, it is necessary to go through the evidence on record. It is admitted fact that the victim did not subject herself to medical examination although she was sent for it by I/O of the case. The prosecution examined the complainant /victim as PW2. She deposed inter-alias that on the fateful day, at about 2 pm., she went to the field to pick up her goats. At that time, the accused came on a motor-cycle and caught her hand and pulled her towards the field forcibly. The accused caught her right shoulder also. Due to her shouting, the accused fled away there from. Hence, she returned to her home. At that time her mother was absent in the house. When her mother came back at night, she reported the incident to her mother. Her mother informed the incident to her brother Biswajit Sarma who went to the house of the accused on next day to inquire about the incident. Thereafter, she was advised to file the case and accordingly, she filed the FIR vide Ext.1 with her signature. The police sent her for medical examination and to record her statement in the court. Ext.2 is the medical report with her signature. Ext.3 is her statement with her signatures. At the time of incident, she was in class-IX and was 16 years old.
- 9. In the cross-examination, PW2 stated that she could not say after how many days, she filed the Ext.1. she saw the accused for the first time on the fateful day. The accused took her photograph on the mobile handset.
- 10. The above evidence of PW2 is not corroborated by PW1 Sri Satyajit Das. He deposed that he has no knowledge of the occurrence. Hence, such evidence does not come to assist the prosecution.
- 11. PW3 Smti. Purnima Devi is the mother of PW2. But she was not an eye-witness of occurrence. PW3 stated that on the fateful day, she was absent in her house. On the same day at about 6 pm., she came to her home when PW2 reported her that when PW2 went to field to pick up goats, the accused came and pulled PW2 towards the paddy field by pulling her hand forcibly. After two days, the FIR was filed before the police after considering and deciding to proceed

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against the accused. The police sent the victim for medical examination and to record statement before the court. According to PW3, the victim was 16 years old at the time of occurrence.

- 12. In the cross-examination, PW3 stated that the accused took photograph of PW2 in mobile phone which she saw. PW2 reported her that PW2 raised hue and cry at the time of occurrence but she cannot say of someone came to save PW2. She was reported that due to shouting of PW2, the accused released PW2 immediately.
- 13. PW4 Sarat Boro is the I/O of the case. He deposed inter-alias that on 11.10.18 while he was posted at Athiabari OP., the complainant/ victim lodged the FIR before Mushalpur police station alleging inter-alias that on 6.10.18 at about 2 pm., while the victim went to pick up her goats, on her way, at Ulubari road, the accused caught the hand of victim and forcibly tried to take her to paddy field to commit ill act. Accordingly, O/C Mushalpur police station, registered the case no.108/18 and endorsed him to investigate the case. During the investigation, he visited to place of occurrence and drew up its sketch map vide Ext.4 with his signature. He examined the victim girl and sent her for medical examination and to record her statement u/s 164 CrPC. He arrested the accused. After completion of investigation, the charge-sheet vide Ext.5 was filed against the accused.
- 14. In the cross-examination, I/O stated that the complainant did not disclose any cause of delay in filing the FIR. There is no report of doctor in support of age of the victim. He did not collect school certificate of the victim to ascertain her age. The victim refused for her medical examination.
- Thus, from the above evidence so tendered by the prosecution witnesses, it appears that the alleged occurrence took place during day broad light and near village road. The evidence of PW2 is important since she is sole victim of alleged occurrence but PW1 and 3 are not eye-witnesses of occurrence. But before going into main aspect of occurrence, it would be proper to find out if PW2 is a child. She claims that her age was 16 years at the time of occurrence. She is corroborated by her mother PW3. No other document is submitted by I/O to know the correct age of PW2. It appears that PW2 refused her medical examination for which her skeletal age is not determined by doctor. I/O also, failed to collect any certificate of PW2 to know her age. But as mother, it can be held genuinely that

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PW3 knows the correct age of PW2. Hence, on the basis of the evidence of PW3, the age of PW2 is held as 16 years at the time of occurrence. As such, PW2 is found to be a child within the meaning of Section 2(d) of POCSO Act.

- 16. On perusal of evidence of PW2, it appears that the accused caught her hand and shoulder and pulled her to paddy field. But she raised alarm for which the accused released her. Thus, no other act or conduct of the accused is shown by PW2 in the occurrence. The offence sexual assault as defined u/s 7 of POCSO Act which is punishable u/s 8 of POCSO Act requires that whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child to touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent to commit sexual assault.
- 17. At the same time, it requires to assess the act of the accused as assault within the meaning of Section 351 IPC which defines that whoever makes any gesture, or any preparation intending or knowing it to be likely that gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
- 18. Thus, two elements are required to be present in the act of offender in case of offence u/s 8 of POCSO Act; one is sexual intent and other is assault to commit the act to come within the purview of it. So far as the evidence of PW2 and 3 is concerned, it appears that the accused took the photograph of PW2 on the fateful day. PW3 corroborates the said fact that she saw the photograph in the mobile phone. Thus, the act of the accused to pull PW2 forcibly towards a paddy field can be intended to get a photograph of PW2 instead of having any sexual intent. It does not appear from the version of PW2 that the accused touched her vagina, anus or breast. She clearly stated that the accused caught her hand and shoulder while pulling her towards paddy field. PW2 refused her medical examination which deprives the court to know any injury if any, like scratches on her person due to pulling forcibly by the accused. Hence, if a photograph was taken by the accused, there is highly probable that the accused did not have any sexual intent in his act to pull PW2 towards paddy field but to get her photograph. Therefore, from the evidence on record, it clearly appears that there is doubt that if the accused had pulled PW2 towards paddy field by holding her hand shoulder with his sexual intent. Accordingly, the accused is given the benefit of such doubt.

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Under the above facts and circumstances of the case, the prosecution has able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 8 of POCSO Act and as such, the accused is acquitted and set at liberty. His bail bond is however, remained in force for another 6 months u/s 437-A CrPC. Forwards a copy of judgment to the District Magistrate, Baksa, Mushalpur as required u/s 365 CrPC. The victim is entitled for monetary compensation due to the act of the accused u/s 357 CrPC. Hence, this court recommends payment of compensation to the victim of the occurrence of the case by DLSA, Baksa district.

20. Given under the hand and seal of this court on this 20th day of September 2019.

Dictated and corrected by:

Judge, Spetial Court Baksa Mushali Baksa, Mushalipur tudge, Special Court Baksa, Mushalpur

Typed by :

In the Court

P. Deka, Com. Typist



ANMEXURE:

List of prosecution witness:

PW1 ... Sri Satyajit Das

PW2 \dots the victim girl (name withheld)

PW3 ... Smti. Purnima Devi

PW4 ... Sri Sarat Boro ... I/o

List of defence witness:

Nil

List of documents exhibited:

Ext.1 ... FIR

Ext.2 ... medical report

Ext.3 \dots statement u/s 164 CrPC of victim

Ext.4 ... sketch map

Ext.5 ... charge-sheet

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