IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.06/2017

U/S- 325 of IPC, R/W Section 8 of the POCSO Act, 2012.

State of Assam

-Versus-

Sri Tulak Rabha

s/o-Sri Sukleswar Rabha

Resident of vill –Hatigarh

P.S.-Chhaygaon

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor ------for the

State

Md. Abdur Rahim, Advocate ------for the accused

Date of evidence:18.12.2017, 20.03.2018, 19.11.2018,

26.11.2018, 27.03.2019, 02.07.2019.

Date of Argument: 18.07.2019

Date of Judgment: 01.08.2019

JUDGMENT

- 1. The Prosecution case in brief is that—on 14.01.2017 the complainant Sri Rudrakanta Rabha lodged an ejahar alleging that on that very day, the accused—Tulok Rabha tried to commit rape upon his minor daughter when she was going to a shop by taking advantage of darkness. Hence, this case.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 27/2017 U/S- 325/34 IPC, R/W Section 8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 325/34 of IPC, R/W Section 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 325 of IPC, R/W Section 8 of the POCSO Act, 2012, against accused person— Tulok Rabha. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as 7 (seven) numbers of witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and desires to adduce evidence. Defence side adduced evidences of 3 (three) D.Ws.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 14.01.2017 at village Hatigarh under Chhaygaon P.S voluntarily caused grievous hurt to the informant, father of the victim and thereby committed an offence punishable U/S 325 IPC?
- (II) Whether the accused person on the same date, time and place committed sexual assault upon the informant's

minor daughter and thereby committed an offence punishable under section 8 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. I have carefully perused the case record. Heard Ld. Counsels for both the sides. The learned Counsel for the accused submitted that the accused has been falsely implicated in this instant case. He further argued that there are no eye witness to the occurrence.
- 7. Let us go through the evidences on record to find out if the prosecution side has proved the case.
- 8. P.W.1, Rudrakanta Rabha is the informant of this case. Prosecutrix is his daughter. He stated that on 14.01.2017 at about 6 p.m his daughter (prosecutrix) went to the shop for purchasing tea. While she was proceeding to the shop, accused—Tulok Rabha met her on the road. P.W.1 stated that the accused tried to hold her breast and tried to do bad act. Prosecutrix cried and on hearing the noise, P.W.1 came out from the house and he met his daughter (prosecutrix) on the other side of the bridge which is situated at a little distance from his house. On enquiry, prosecutrix told him that the accused did bad act with her. Thereafter, P.W.1 went to the house of the accused and asked him what he had done with the prosecutrix. Thereafter, the family members of the accused assaulted P.W.1 and his wife. P.W.1 then lodged the ejahar and the ejahar was written by a scribe in the police station. Ext.1 is the FIR. Ext. 1 (1) is his signature. Ext.2 is the printed form of FIR. Ext. 2 (1) is his signature.

In her cross-examination, P.W.1 has stated that he does not know the name of the scribe. He did not know whether it was recorded in his FIR that accused caught hold on the breast of the prosecutrix. He further deposed that on the date of the incident accused along with other villagers were returning from a picnic party and at the time of incident, other boys of the village who were together in a picnic party were present near the place of occurrence. But accused came away from the group and committed the offence. He stated that the village boys namely—Kuki Rabha, Rupam Rabha,

Mithen Rabha, Joy Kumar rabha, Bitupon Rabha, Debojit Rabha and few others were present there. The boys were dancing on the vehicle near the place of occurrence. Further, he denied that somebody out of the picnic group teased the prosecutrix and for that they falsely implicated the accused by lodging an FIR.

9. P.W.2, Smti. Ranjita Rabha is the wife of the informant and mother of the prosecutrix. She knows the accused person. She stated that prosecutrix was aged about 16 years at the time of incident. On that day at 6.00 p.m, she sent the victim to the shop of one Sabin Rabha. But, before prosecutrix reached the shop, P.W.2 heard her shouts. Then, she and her husband (P.W.1) went out and saw the prosecutrix was crying. On enquiry, prosecutrix told them that accused caught hold on her breast. Thereafter, he fled away. On hearing about the incident from the prosecutrix, they went to the house of the accused to make a quarry about the incident. But on arrival, accused threatened her husband with a fire wood and the elder brother of the accused pushed her husband. Thereafter, lodged the ejahar.

In her cross-examination, P.W.2 deposed that she did not know exactly the date of occurrence. She disclosed that on the day of occurrence, accused was returning from picnic and there were many friends with accused in that evening and she saw the DI vehicle which was parked at a distance of around 100 feet from the place of occurrence. And on the side of the vehicle the boys, namely, Phukhi Rabha, Joy Kr. Rabha, rupam Rabha, Mithun Rabha, Debajit Rabha and other were present. Accused was also a member of that picnic party. Further, P.W.2 denied the suggestion that the group of boys returning from picnic have teased the prosecutrix and the prosecutrix uttered harsh words at them and she became annoyed and cried.

10. P.W.3 is the prosecutrix/victim. She stated in her evidence that the incident took place on 14.01.2017 at about 6.00 p.m. She was 16 years old at the time of incident. On that day, she went to purchase kerosene from a nearby shop and on the way to the shop near the bridge, accused caught hold on her breast. Then, she cried and the accused fled away. Her parents arrived. She told the incident to her mother (P.W.2). Her parents along with

her Uncle, Aunt went to the house of the accused to inquire about the incident. P.W.3 also accompanied them. There the elder brother of the accused assaulted her father (P.W.1) and for that they returned back from there and lodged the ejahar. Police brought her before the Magistrate for recording her statement U/S- 164 Cr. P.C. Ext.3 is the statement Ext. 3 (1 and 2) are her signatures.

In her cross-examination, P.W.3 deposed that at the time of incident there were 10/12 boys with the accused, who had returned from the picnic and were sitting on the top of bridge. The boys were dancing. She also stated that after the incident, her parents along with 10/12 of their family members went to the place of occurrence.

11. P.W.4, Anirudha Rabha has deposed that she knows both the parties. On the date of occurrence, she was on the road. She heard the noise and went forward. Then she saw the victim (P.W.3) standing near the bridge. When she asked P.W.3, she told her that accused touched her body. She saw accused going away from there through a bye lane. And after hearing the noises, the parents of the prosecutrix arrived there and P.W.4 went away.

In her cross-examination, P.W.4 deposed that the time of incident was evening and was a little dark. P.W.4 also stated that the boys returning from picnic were there on the other side over the bridge. P.W.4 arrived the place of occurrence just few seconds before arrival of the parents of the prosecutrix.

12. P.W.6, Nileswar Rabha has deposed that he knows both the parties. The incident took place about a year ago in the evening hours. At 8.00 p.m when he was in his house having dinner, then the informant (P.W.1) came to their house and told him that the accused attempted to do some bad act with the prosecutrix. Then, P.W.6 advised him to inform the village people and to call for village meeting regarding the incident.

In his cross-examination P.W.6 deposed that he was not present in his house at the time of occurrence. He heard from the informant that the accused had teased the prosecutrix and also heard that the accused had gone to picnic to Ukium on that day with other village youths.

- 13. P.W.7, Dr. Manisha Das is the M.O in this case. She deposed that on 14.01.2017 at 8.50p.m she was working as Sr. Medical & Health Officer, Chhaygaon P.H.C, Kamrup. On that day, she examined one Rudrakanta Rabha, male, 35 years of age and one Ranjita Rabha, female, 30 years of age brought in reference Chhaygaon P.S case No. 27/17 U/S-325/34 of IPC R/W Section 08 of the POCSO Act, 2012. Victims were escorted by WPC/529 Purnima Das Mali. On examination of victim—RudraKanta Rabha, she found bruishes on the left eye and multiple abrasion over the body. And on examination of victim—Ranjita Rabha, she found that she was suffering from back ache and body ache. Type of weapon used is blunt weapon and the nature of injuries of both the victims were simple. Ext.6 is the medical report. Ext. 6 (1) is her signature. In her cross-examination she deposed that the injuries of both the victims may be caused by falling.
- 14. P.W.5, A. S. I Kuladhar Talukdar has deposed in his evidence that on 14.01.2017, he was serving as A.S.I cum Shirastadar at Chhaygaon P.S. On that day after receiving an ejahar lodged by one Sri Rudra Kanta Rabha, O/C, Chhaygaon P.S—Sri Shon Kr. Sarma, registered a case bearing Chhaygaon P.S Case No. 27/2016 U/S-325/34 of IPC R/W section 8 of POCSO Act, 2012 and directed him to investigate the case. And accordingly, P.W.5 took up the investigation. Before taking up the informant came to the P.S and verbally informed them about the incident. The informant and his wife— Ranjita Rabha were taken to Gobardhan PHC for the medical treatment as they had sustained injuries on their person. They were given first aid treatment. Thereafter, the informant lodged the ejahar. On the next day i.e on 15.01.2017 at about 9.00 a.m he visited the place of occurrence along with other staffs and recorded the statement of the witnesses including the victim girl. He also prepared the sketch map. Ext.4 is the sketch-map and Ext. 4(1) is his signature. P.W.5 sent the victim for her medical examination on 17.01.2017 but she refused to do any medical examination. P.W.5 sent the victim to the Court for getting her statement recorded U/S-164 Cr. P.C before

the Magistrate on 18.01.2017. The victim was allowed to go in the zimma of her guardian after her statement was recorded. The accused was arrested on 24.01.2017 and produced before the Court. On 28.01.2017 P.W.5 collected the medical report of the injured persons—Rudra Kanta Rabha and Ranjita Rabha. Thereafter, P.W.5 completed the investigation and on finding sufficient materials against the accused, he submitted charge sheet against the accused—Tulak Rabha U/S-323 of IPC R/W section 8 of POCSO Act along with the medical report of the injured persons. Ext.5 is the charge-sheet and Ext. 5 (1) is his signature.

In his cross-examination P.W.5 stated that he recorded the statement of the prosecutrix (P.W.3) in the place of occurrence on 17.01.2017 and the incident took place on 14.01.2017. P.W.3 did not state before him that she cried and her parents came there.

- 15. Defence side examined two numbers of witnesses.
- 16. D.W.1, Brojen Rabha deposed that he knows the victim as well as accused. D.W.1 also knows the informant. Incident took place on 14.01.2017 and on that day, they 10 boys including the accused had gone for picnic to Ukium. On their return at 6 p.m, they stopped the picnic vehicle near pucca bridge at Hatigarh. They waited there for an hour dancing and singing. Accused was also with them. Then, the victim was walking by the side of their vehicle D.W.1 disclosed that one of the members of picnic party teased the victim girl and called her 'Maina'. The victim scolded them and went away. This witness stated that the case has been falsely lodged by the victim's father against the accused—Tulak Rabha. He did not do any bad act with the victim.

In his cross-examination D.W.1 disclosed that accused is his friend and relative. Victim is also related to him.

17. D.W.2, Tulok Rabha is the accused of this case. He knows the victim and the informant of this case. The incident took place on 14.01.2017. On that day, he along with 10/12 boys had gone for picnic to Ukium. On their return at 6 p.m, they stopped the picnic vehicle near pucca bridge at Hatigarh

and they were waited there for an hour dancing and singing. Then, the victim was walking by the side of their vehicle and some of the members of picnic party teased the victim girl and called her 'Maina'. The victim, then, scolded them and went away. D.W.2 stated that the case has been falsely lodged by the victim's father against him, he did not do any bad act with the victim. In his cross-examination, D.W.2 denied the suggestions put to him by the prosecution.

- 18. Now, in this instant case, apart from the victim (P.W.3) there are no eye witness to the incident. According to P.W.3, when she went to purchase kerosene from a nearby shop and on the way to the shop near the bridge, the accused caught hold on her breast. P.W.3 cried and the accused fled away. And on hearing her cries, her parents arrived. She told the incident to her mother (P.W.2) and then her parents along with her Uncle, Aunt went to the house of the accused to inquire about the incident. It is in the evidence of P.W.1 (father of the victim) that the accused tried to touch the breast of P.W.3 and tried to do bad act with her. Again, P.W.2 stated that the accused caught hold of the breast of P.W.3. The witnesses-P.W.1, 2 and 3 are related to each other. P.W.4 and P.W.6 are independent witness. It further comes out from the evidence of P.W.4 that she met the victim (P.W.3) immediately after the incident on hearing the shouts of P.W.3 and P.W.3 told that the accused touched her body. P.W.6 stated that he heard from P.W.1 that the accused attempted to do some bad act with victim (P.W.3). So, the evidence of the witnesses are found to be contradictory.
- 19. Defence plea is that on the date of occurrence, the accused along with other 10 boys including the accused had gone for picnic to Ukium. On their return at 6 p.m, they stopped the picnic vehicle near Pucca Bridge at Hatigarh and were dancing and singing. And when the victim was walking by the side of their vehicle, one of the members of picnic party teased her and called her 'Maina'. The victim scolded them and went away. The D.Ws have supported each others version and stated that on the day of occurrence after returning from picnic, when they stopped the vehicle at Hatigarh, then some of the members of picnic party teased the victim girl and called her 'Maina'. Then the victim, scolded them and went away.

- 20. It has come out from the cross examination of the P.Ws that the accused was in the picnic party which had returned back from Ukium and they were all present in the place of occurrence. The picnic party had stopped the vehicle near the spot near the Pucca Bridge and the boys of the picnic party were dancing. Independent witness, P.W.6 disclosed in his cross-examination that he heard from the informant (P.W.1) that the accused had teased the prosecutrix (P.W.3) and that the accused was in the picnic party with the other village youths.
- 21. So, the evidence of the D.Ws finds support in the cross-examination of the P.Ws that the accused was in the picnic party which returned from Ukium at the time of occurrence and had halted near the spot.
- 22. While evaluating the evidences on record, it is found that on the date of occurrence, as the victim (P.W.3) was going to the nearby shop, the youths of the picnic party who had halted at the spot had only teased her. So, the sole evidence of the victim (P.W.3) cannot be relied upon. Her evidence does not inspire confidence at all.
- 23. As regards the offence U/S- 325 of IPC, there is no iota of evidence in this regard. Now, **Sexual Assault** is defined **U/S 7 of POCSO Act** as "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act. So the offences U/S- 325 of IPC, R/W Section 8 of the POCSO Act, 2012 are not attracted in this instant case at all.
- 24. It is settled principle of law that in a criminal case the prosecution must prove the guilt of the accused beyond all reasonable doubt and the accused cannot be convicted on presumption or assumption. Therefore, considering the facts and circumstances of the case, the accused is entitled to get the benefit of doubt.

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25. In the result, the prosecution has miserably failed to prove the

case beyond all reasonable doubt against the accused person. Accordingly,

the accused person— Tulak Rabha is held not guilty and he is acquitted of the

offences U/S-325 of IPC, R/W Section 8 of the POCSO Act, 2012 and set at

liberty forthwith.

25. His bail bonds shall remain in force for next 6 (six) months U/S-437

(A) Cr. P.C.

26. The case is disposed of on contest.

27. The Judgment is pronounced in open Court and written on

separate sheets.

Given under my hand and seal of this Court on this 01st day of August, 2019.

Special Judge,

Kamrup, Amingaon

Dictated and corrected by me

Special Judge,

Kamrup, Amingaon

A**PPENDIX**

Prosecution Witness:

P.W.1, Rudrakanta Rabha

P.W.2, Smti. Ranjita Rabha

P.W.3 is the prosecutrix/victim

P.W.4, Anirudha Rabha

P.W.5, A. S. I Kuladhar Talukdar

P.W.6, Nileswar Rabha

P.W.7, Dr. Manisha Das

Prosecution Exhibit

Ext.1 is the FIR.

Ext.2 is the printed form of FIR

Ext.3 is the statement

Ext.6 is the medical report

Ext.4 is the sketch-map

Ext.5 is the charge-sheet

Defence witness:

D.W.1, Brojen Rabha

D.W.2, Tulok Rabha