IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

POCSOCaseNo.31/2018corresponding to GR Case No.1200/2018& Bokajan Police Station Case No.245/2018 Under Section 8 of the POCSO

Act.

State of Assam

Versus

Shri Binod Shah, Accused person

Name of informant/complainant:

Smti Ramita Devi

W/O Shri Lalbabu Singh

Village: Amarajan, Manipuri Basti,

P.S: Bokajan

District: Karbi Anglong, Assam.

Name of the accused person facing trial:

Shri Binod Shah

S/O Shri Baidyanath Shah

Village: Amarajan, Manipuri Basti,

P.S: Bokajan

District: Karbi Anglong, Assam.

Advocates appeared:

For the prosecution : Mr D. K. Deka, Public

Prosecutor

For the accused : Mr R. L. Borah

Argument heard on : 03.06.2019

Date(s) fixed for Judgment: 10.06.2019/ 17.06.2019/

21.06.2019/ 03.07.2019/ 17.07.2019

N.B:- The Judgment could not be pronounced on the date fixed due to absence of the accused person.

JUDGMENT

- 1. It is a case of sexual assault alleged to have been committed by the accused, Shri Binod Shah.
- 2. The prosecution case in brief is that on 14.11.2018 the informant, Smti Ramita Devi lodged an ejahar with Bokajan Police Station stating inter alia that on 13.11.2018 at about 6:00 PM taking the advantage of absence of family members of her house, the accused who lived near her house in a rented house molested her victim daughter age of 08 years by touching her private parts and breast. On receipt of the written ejahar, O/C, Bokajan Police Station registered a criminal case vide Bokajan Police Station case No. 245/2018 under section 8 of the POCSO Act and he himself took the charge of investigation. On completion of the investigation, he being the I.O. submitted charge-sheet under section 354 of IPC read with section 8 of the POCSO Act against the accused person. Hence the prosecution case has come up.
- 3. On completion of appearance of the accused person before this Court, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, I found that there was grounds for presuming that the accused person committed the offence under section 8 of the POCSO Act and accordingly the charge was framed. The particular of the offence charged was

duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, Prosecution has examined as many as 5 (five) witnesses including the informant and alleged victim. Accused person has been examined U/S 313 of CrPC. Defense examined none. Plea of defence is of total denial.

5. **Point for determination is:**

Whether the accused person Shri Binod Shah on 13.11.2018 at about 6:00 PM at Vill-Amarajan under Bokajan Police Station committed sexual assault upon the victim aged 08 years at her house?

6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

7. PW-1 is Smti Ramita Devi who is the informant of this case. She deposed that she knows the accused person. The occurrence took place on the day of "Sathh Puja" of November month in the year 2018. The accused person lived in a rented house near her house. On the day of incident on evening, her daughter the victim came to the accused house for

watching television. After a while, she went to the accused house to bring her daughter back and seen that the accused sexual assaulted with her daughter by touching her private parts. After reaching home, she informed the matter to the nearby people. Then on being asked by the nearby people to the victim girl and she (victim) informed that the accused sexual assaulted with her by touching private parts. Besides the victim girl also disclosed that the accused touched her chest earlier also. At the time of occurrence, she was 08 years old. Thereafter, she lodged the ejahar at Bokajan Police Station. Ext.1 is the ejahar and Ext1(1) is her signature. Later, police brought the victim to Diphu Civil Hospital for medical examination. Statement of the victim was recorded in the Court.

- 8. PW-2 is Smti Mamta Debi who has deposed that she knows the informant, accused and the victim. The incident occurred on Sathh Puja day in the year 2018. She lived in a rented house in the same campus along with informant and accused person in separate rooms. On the day of the incident about 7:30 PM, the complainant informed her that the accused person molested her daughter by touching private parts upon the victim. The alleged victim also informed her that the accused touched her private parts earlier also that time nobody was present there. After the next day of the incident, we lodged ejahar at Bokajan Police Station along with complainant. At the time of incident, the victim girl was 08 years old.
- 9. PW-3 is Smti. Sananu Debi who has deposed in her testimony that the complainant is her daughter-in-law. The occurrence took place less than one year.

She learned the incident over telephone from her daughter-in-law. The complainant informed her that the accused molested her daughter by touching her private parts and entering finger into her anus. On being asked to the victim girl she also informed her that the accused molested her by entering finger in private part. At the time of occurrence the age of the victim was 8 years old. Next day after incident, they went to the police station and lodged ejahar along with the complainant and other people.

- 10. PW-4 is Dr Karik Kropi who has deposed in her deposition that on 14.11.2018 while she was working as SDMO at Diphu Civil Hospital, she examined the victim aged 8 years in connection with Bokajan Police Station Case No. 245/2018. On her examination, she found no marks of injury on her body. She did not find mark of injury on the genital part of the victim. She did not examine vaginal part as there was no sign of sexual intercourse. As per X-ray report, age of the victim girl is below 18 years, around 9-12 years. Ext.2 is the medical report and Ext.2(1) is her signature.
- 11. PW-5 is the victim who has testified in her deposition that she knows the accused, Shri Binod Shah. Accused house is nearby their house. On the day of the occurrence, the victim girl was watching TV at the accused house on lying on the bed. Then the accused person entered into room and inserted his finger into her anus from her back side. Then she made hue and cry and the accused informed her that it is nothing. After the occurrence her mother came to the house of accused to bring her back. She informed the matter to her mother after reaching home. The accused touched her breasts earlier also. Doctor examined her. Police got her statement

- recorded in the Court. Ext.3 is her statement and Ext3(1) and 3(2) are her signatures. At the time of incident, she was reading in class 4(four).
- 12. PW-1 is the mother of the victim. PW-2 is the immediate neighbour of the accused and the informant. PW-3 is the grandmother of the victim. PW-4 is the medical officer. PW-5 is the victim.
- 13. For attracting any provision of POCSO Act, the victim needs to be a child. According to the 2 (d) of POCSO Act a person who is below 18 years called a child. Mother is the best person who knows age of her children. According to informant mother at the time of occurrence victim was 8 years old. Similarly, PW-2 and PW-3 have categorically stated that the victim was 8 years old at the time of occurrence. Ext.2 is the medical report also shows that at the time of occurrence the victim was 9/12 years old. Taking all aspect into consideration, I am convinced to hold that at the time of occurrence, the victim was below 12 years. In view of the discussion above, it has crystal clear that at the time of occurrence the victim was child.
- 14. According to the victim, on the day of occurrence the accused inserted his finger into her anus from her back side and that on another occasion the accused touched her breasts. PW-1 who is the mother of the victim has stated in her testimony that coming to the house of the accused she found him touching vagina of the victim by putting hand inside her pant she was wearing. Evidence of the victim is silent when her mother came to the house of the accused, accused was touching her vagina. Ext.3 is the statement of the victim girl recorded under section 164 CrPC

- during investigation wherein the victim stated that the accused inserted his finger into her anus as she has stated in her deposition in the Court. Ext.2 is the Medical report which does not disclose any injury detected on the back of the victim.
- 15. In a case of such a nature, victim is most material and vital witness. PW-2 appears to be neighbourer of the informant. According to PW-2, while she came to the house of the informant, the informant informed her that accused touched private part and breasts of the victim. Similarly, PW-3 who is the grandmother has also stated that the informant informed her that the accused inserted finger into the private part of the victim and touched her breasts. In view of the discussion made above, I find that there is a doubt that the informant mother saw the accused touching her vagina by putting his hand inside the pant.
- 16. As I have already held that the victim was a child below 12 years. A child can be easily tutored. It is evident that at the time of occurrence the relation between the accused and the informant was cordial and that the occurrence took place in the house of the accused itself. Hence, I find no way to hold that the informant tutored the victim to depose false out of grudge.
- 17. Defence has not let any evidence to rebut the prosecution case in the light and sprit of section 29 of the POCSO Act.
- 18. Section 7 of the POCSO Act is related to sexual assault which reads thus:- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touche 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.

- 19. Section 8 of the POCSO Act relates to punishment for committing sexual assault as define in the section 7 of the POCSO Act which read thus:- Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.
- 20. Regarding the evaluation of the evidence of the child witness I would like to refer the decision rendered in the case of **Digamber Vaishnav v.**State of Chhattisgarh reported in "(2019) 4

 SCC 522" and relevant para is reproduced below:"22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law."
- 21. It is held in State of H.P Vrs Manga Singh reported in 2018 SCC OnLine SC 2886 by the Hon'ble Apex Court in respect of sole testimony of victim in the case relating to sexual offences which reads "11. The conviction can thus:be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to corroboration of her insist for statement.

Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix."

22. Having regards to the discussion made above and the observation made in the case Law cited above, I find no way to disbelieve the evidence of the victim child. Accordingly I find that the prosecution has succeeded in establishing its case under section 8 of the POCSO Act against the accused person beyond all reasonable doubts.

ORDER

- 23. In the result, I find the accused Binod Shah guilty under section 8 of the POCSO Act and accordingly he is convicted.
- 24. On the point of sentence the accused person is heard and to that effect his statement is recorded. From the statement it appears that he is the only earning member of his family consisting of his wife and his 2 children and that he was not earlier convicted by the Court of Law. He has also prayed for leniency in sentencing him. Learned advocate appearing on behalf of the accused person has submitted that if the accused is put into the bar his entire family will have to go without food and as such the accused deserves to be punished leniently. On the other hand, the learned Public Prosecutor has submitted that the accused be punished as per provision of Law. Taking all aspects consideration, I do hereby leniently order the accused Sri Binod Shah to undergo R.I of 3 (Three) years and

to pay of Rs. 1000/- i/d S.I of 1 (One) month. Set off his earlier detention period. Let certified copies of the Judgment and order be furnished to the accused person at free of cost. No order as regards compensation under section 357 A of the CrPC is passed.

- 25. Accordingly this case is disposed of on contest.
- 26. Given under my hand and seal of the Court on this 17th July, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS) AJS) Special Judge Diphu, Karbi Anglong, Assam Anglong, (Md. A.U.Ahmed,

Special Judge Diphu, Karbi

APPENDIX

Prosecution Witnesses:

- PW1- Smti Ramita Devi
- PW2- Shri Smti Mamta Debi
- PW3- Smti Sananu Debi
- PW4- Dr Karik Kropi
- PW5- Smti Laxmi Devi

Defence Witnesses: Nil

Prosecution Exhibited:

- Ext.1- Ejahar
- Ext.2- Medical Report
- Ext.3- Statement of the victim

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam