IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

<u>Spl. (P) Case No.22 of 2016, U/S 12 of POCSO Act 2012</u> (Arising out of Nazira P.S. Case No. 107/2016)

State of Assam

-Vs-

Sri Biki Robidas @ Bhoka Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Ranjan Kalita, Advocate

Date of framing Charge : 18.03.2017

Dates of Evidence : 14.03.2018, 20.08.2018

Date of Argument : 20.08.2018 Date of Judgment : 20.08.2018

JUDGMENT

- 1. Prosecution case, in brief, is that on 03.06.2016, one Sri Jiten Mohali lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, that on 02.06.2016, at about 8.45 PM, while his daughter victim 'B' (name withheld), aged about 15 years went to backside of her house to attend nature's call, accused Biki Robidas came there and grabbed the victim from backside and laid her on the ground with a view to commit misdeed with her.
- 2. On receipt of the FIR, Nazira P.S. Case No.107/2016, U/S 12 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S

- 164 Cr.P.C. During investigation, accused was arrested and forwarded to court. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 12 of POCSO Act, 2012.
- 3. On receipt of the charge sheet, cognizance was taken, copy was furnished to him and after hearing both the sides, vide order dated 18.03.2017, charge U/S 12 of POCSO Act, 2012 has been framed against accused Biki Robidas to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined four witnesses including the victim and informant. Defence cross-examined the said P.Ws but adduced no evidence.
- 4. Examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material found against the accused for the alleged offence in the evidence of victim, informant and other witnesses.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. Ranjan Kalita, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE -

- 6. (I) What was the age of the victim 'B' on the date of incident?
 - (II) Whether on 02.06.2016, at about 8.45 PM, accused committed sexual harassment on the victim 'B' with sexual intent?

DECISION AND REASONS THEREOF

PW-1 Sri Jiten Mahali deposed in his evidence that accused Bhoka Rabidas @ Biki is known to him being a neighbour. Victim 'B' is his daughter. Her present age is about 19-20 years. On the day of filling the FIR, his son Siba Mahali reported him that his daughter while talking at veranda with her friend Dipali Gosai, after some time her daughter went to back side to attend nature's call. On knowing this, his son went to the back side of house and saw the accused in holding the victim. Seeing him, accused flee away. On PW 1's

asking, his daughter also told him the incident in similar way. On this incident, on the next day morning, he lodged the FIR at Nazira PS. Exbt. 1 is his FIR. Exbt. 1(i) is his signature. He further deposed that Police came to investigate the matter and interrogated him. In his cross examination, PW 1 accepted that he has not seen the incident on his own. At the time of incident, he was not present in his house. Nazira PS is at distance of about 4 KM from his house. On the same night he did not inform police. PW 1 further accepted that he has not explained the cause of delay in filling the FIR. He cannot say about the contents of the FIR. Accused used to visit his residence frequently. PW 1 further deposed that due to some misunderstanding, he lodged the FIR and has no objection in acquittal of the accused. Presently his daughter was married with other boy.

8. PW-2 Victim 'B' deposed in her evidence that accused Bhoka Rabidas @ Biki is known to her being a neighbour. Her present age is about 18 years. On 02.06.2016 at about 9 PM she went to back side of her house to attend nature's call, accused Biki came there and grabbed her from back side and laid her on ground. In the mean time, her brother Siva Mahali came there and saw the accused. On this accused flew away. On returning home, she informed the matter to her father, and other family members. On this incident, her father lodged the FIR at Nazira PS. Police took her for medical examination and also to court where she gave my statement. Exbt. 2 is her statement given in court. On that day she deposed in similar lines. In her cross examination she accepted that at the time of incident, there was complete dark on the back side of her house. There was no provision of light at that place. The persons grabbed her did not utter any word. Due to darkness, she could not see his face. She cannot say her exact date of birth. On the date of incident, accused came to her residence for dinner. Presently she is married with other boy. She is maintaining good relation with the accused. PW 2 deposed that due to some misunderstanding, her father lodged the FIR. She has no objection in acquittal of the accused.

- 9. PW-3 Sri Siva Mohali deposed in his evidence that on 02.06.2016 at about 7-8 PM while returning from market, he have seen one boy on the back side of his house. On his asking about his identity, said boy flee away therefrom. On entering the house, his sister 'B' informed him that when she came out of the house for urination, accused Biki came there and hold her hand. On knowing this, PW 3 informed the matter to his father. However, in spite of resistance and out of anger, his father lodged the case. Police interrogated him. In his cross examination, PW 3 accepted that at the time of incident, there was complete dark on the back side of his house. There was no provision of light at that place. Due to darkness, he could not see his face of the boy who runaway on his call. He has not seen the incident of holding hand of his sister by accused. Due to some misunderstanding, his father lodged the FIR. He has no objection in acquittal of the accused.
- 10. PW-4 Smt Diplai Gosai deposed in her evidence that accused Bhoka Rabidas @ Biki is known to her being a neighbour. Victim 'B' is her friend. She used to reside in the house of victim. On 02.06.2016 at about 6 PM, while PW 4 was at the residence of victim, accused Biki came to the residence of victim and went out with Siva for tour. After some time, while vitim 'B' went on the back side of her house, and did not return, Siva went on the back side of his house and on seeing him in talking with victim 'B', Siva attempted to assault Biki, but Biki managed to flee away. PW 4 deposed that she has followed Biki and seen the entire incident. In her cross examination, PW 4 accepted that while victim went out of her house, she was inside the house. Except talking by accused with victim, she has not seen any other incident. After the incident, victim did not told her about any misbehaviour by accused, though she was with her for the whole night.
- 11. <u>Point No. I:</u> So far age of the victim is concerned, from the FIR, it appears that at the time of alleged incident victim was aged about 15 years. However P.W.1, the informant as well as father of the victim in his evidence

(deposing on 14.03.2018) has stated the present age of the victim as 19-20 years. The victim in her evidence (deposing on 14.03.2018) claimed her present age as 18 years. The above evidence on age of the victim remains unchallenged though alleged incident happened on 02.06.2016. As such, as per the victim on the date of incident she was below 18 years.

12. Point No. II: So far allegation of sexual harassment on the victim is concerned, from the evidence of P.W. 1, it appears that he came to know about the incident on the next day from his son Siva Mohali. In his cross P.W.1 admitted that he has not seen the incident on his own as he was not present in his house at the relevant time. He admitted that due to some misunderstanding he has lodged the FIR. From the evidence of P.W.2 the victim it appears that on the day of incident, while she went backside of her house to attend nature's call, accused Biki came there and grabbed her from backside and laid her on ground. In the meantime her brother Siva Mohali came there and on seeing him, accused flee away. P.W. 2 also deposed that she has reported the incident to her father and other family members. During cross she admitted that at the time of incident there was complete dark on the backside of her house and due to darkness she could not see the face of the person grabbed her. From the cross examination of victim it reveals that she is maintaining good relation with the accused and now she has no objection in acquittal of the accused. P.W. 3 Sri Siva Mohali and P.W. 4 Smt. Dipali Gosai also deposed in similar line as deposed by P.W. 1 and 2. From the cross examination of P.W. 3 it appears that due to some misunderstanding his father lodged the FIR and now he has no objection in acquittal of the accused. P.W. 4, who claimed herself to be an eye witness, in her cross admitted that except talking by accused with the victim, she has not seen any other incident. After the incident, victim did not tell her about any misbehavior by the accused, though she was with her for the whole night. Mere talking with a girl cannot be an offence. The allegation of victim accused lad her on the ground did not get any support from PW 3 and 4, who

went to the place of occurrence.

13. So from the above evidence on record, it appears that none of them has supported the victim regarding grabbing of the victim by the accused from backside while she went to backside of her house to attend nature's call and laying her on the ground.

14. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 12 of POCSO Act, 2012 against the accused Biki Robidas @ Bhoka. As such, accused Biki Robidas @ Bhoka is acquitted from the charge U/S 12 of POCSO Act, 2012 and set at liberty forthwith.

15. Bail bond executed by the accused and his surety are extended for next six months from today U/S 437-A Cr.P.C.

16. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.

17. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.

18. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 20th day of August, 2018 at Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Sri Jiten Mohali (Informant)
 - P.W.2 (Victim)
 - P.W.3 Sri Siva Mohali
 - P.W.4 Smt. Diplai Gosai
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Statement of the victim recorded U/S 164 Cr.P.C.

Special Judge, Sivasagar: