IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 106 of 2018
(Arising out of Barpeta P.S. Case No.1002/2018)
U/S 12/18 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on: - 07.02.2019

State of Assam

- Vs -

Abdul Ali.....Accused.

Date of Recording Evidence on – 13.03.2019, 01.03.2019, 25.03.2019,

20.04.2019, 21.05.2019, 20.06.2019 &

22.08.2019

Date of Hearing Argument on – 12.09.2019

Date of Delivering the Judgment on – 25.09.2019

Appearance:

Advocate for the State------Mrs. Priti Das, Ld. Addl. P.P. Advocate for the Accused------Mr. A. Salam, Ld Advocates.

JUDGMENT

FACTS OF THE CASE

1. The prosecution case, in brief, is that on 13.05.2018 one Md. Majam Ali lodged an FIR in Barpeta police station alleging inter-alia that his daughter (X) (real name withheld) has been reading in Class X in Crescent Academy (private). But as alleged, accused Abdul Ali who is a Lecturer of English in Janapriya Junior College, taking advantage of tuition of private students offered his love to the daughter of informant on the way to her school and back home thereby subjected her mental torture. Having came to know, the informant being the father of the girl expressed deep unhappiness. It is alleged that accused, apart from offering his love, also offered cosmetic materials to her with a view to sexually attract her. Hence the case for taking appropriate action in accordance with with law.

INVESTIGATION

2. Having received the information, Barpeta police station registered a case being Barpeta PS case No.1002/18 u/s 12 of POCSO Act and entrusted S/I Rufu Chetia to investigate the case.

3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses u/s 161 Cr.P.C., forwarded the victim girl to court for recording her statement before Magistrate u/s 164 Cr.P.C. and also seized certain cosmetic materials like one Lakme Eye conic Kajal, one Lipstick name Kiss Beauty, one Unit Test Question Paper hand written of English subject of Class X vide M.R. No.94/18, seizure of original birth certificate of the alleged victim girl (X) real name withhold vide M.R. No.93/18. During investigation, police also drew sketch map and on conclusion of investigation I/O finally laid the charge sheet against accused u/s 12 of POCSO Act against accused Abdul Ali with a view to stand trial.

APPEARANCE

4. In due course, when accused entered his appearance in court, the then learned Special Judge, Barpeta vide order dated 27.11.2018 took cognizance of the offence u/s 12 of POCSPO Act transferred the case record to this court for disposal.

CHARGE

5. Having received the case record on transfer, this court having heard the learned lawyers appearing for both sides and on careful perusal of the materials available on record, having found primafacie materials, charges u/s 12/18 of POCSO Act were framed. The particulars of the offences on being read over and explained accused person pleaded not guilty and claimed trial.

EVIDENCE

During the course of trial, the prosecution, in order to substantiate its case examined as many as 9 witnesses namely-Md. Majam Ali as PW-1, the victim girl (X) as PW-2, Sanowar Hussain as PW-3, Sahanur Alam as PW-4, Abdus Samad as PW-5, Ommesalma as PW-6, Jalauddin Ahmed as PW-7, Sirajul Islam as PW-8 and I/O Rufu Chetia as PW-9. During trial, prosecution also exhibited the seized materials (Cosmetic Items) as Ext.A seized vide M.R. No.94/18, FIR Ext.1 and signature of informant as Ext.1(1). Photocopy of the birth certificate of the girl compared with the original as Ext.2, Statement of the victim girl u/s 164 Cr.P.C. as Ext.3 and signature of the victim girl as Ext.3(1), 3(2) and 3(3). Seizure list M.R. No.94/18 Ext.4 and signature of witnesses as Ext.4(1), 4(2) and 4(3). Seizure list M.R. No.93/18 as Ext.5 and signature of the witnesses as Ext.5(1), 5(2) and 5(3). Sketch Map Ext.6 and signature of I/O as Ext.6(1). Charge Sheet Ext.7 and signature of I/O as Ext.7(1

EXAMINATION OF ACCUSED U/S 313 Cr.P.C.

7. Concluding prosecution evidence, accused were examined u/s 313 Cr.P.C. but accused denied the prosecution evidence as totally false and concocted.

DEFENCE PLEA

8. The defence plea is total denial of the prosecution case. As such, on being asked accused person declined to adduce defence evidence.

9. Now points for determination ;-

- 1. Whether accused person on several occasion commit sexual harassment to the victim girl (X) (real name withhold) with sexual intent inside the Common Room of the school and on her way to school offers his love and as a gestures of his love offered her cosmetic items like Kajal, Lipstick etc (gratification) and also force her to take photographs while she went to picnic and stopped her on her way to school, want to take her on his bike, and on her refusal gave criminal intimidation to her and thereby committed an offence punishable u/s 12 of POCSO Act as alleged?
- 2. Whether on several occasions accused tried to commit the offences prescribed u/s 11 of POCSO Act punishable u/s 12 on her way to school and inside the school room with sexual intent and utters words, makes sounds and gestures and to offer her cosmetic items like Kalal, Lipstick etc and thereby committed an offence punishable u/s 18 of POCSO Act as alleged?

10. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the arduous contention of the learned lawyers appearing for both sides.

11.. Before deliberating on the arguments of the learned lawyers appearing for both sides and evaluating the evidence on record it is useful to refer Section **11 & 12** of POCSO Act.

<u>"Section 11 Sexual harassment.-</u> A person is said to commit sexual harassment upon a child when such person with sexual intent-

- (I) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child;
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
 - (II) shows any object to a child in any form or media for pornographic purposes; or
 - (III) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
 - (IV) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
 - (V) entices a child for pornographic purposes or gives gratification thereof".

Explanation- Any question which involves "sexual intent" shall be a question of fact.

"Section 12 Punishment for sexual harassment.- Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine".

4

- 12. The learned counsel appearing for the state Smti. Priti Das strenuously contended that in the present case prosecution has been able to establish the case against accused by way of adducing credible and trustworthy evidence of the victim girl, informant as well as other prosecution witnesses. The fact that the girl has been subjected sexual torture by accused being a lecturer of English in a private school and in a position of dominance by virtue of being a private tutor of the victim girl has been proved in court through the evidence of the victim girl and other witnesses as the accused not only disturbed/ harassed her on her way to school as well as in the Class Room by offering his unsolicited love to a tender girl of Class X. The fact that accused offered cosmetic items to the victim girl as a gesture of his love to her has also been proved by I/O and also by proving the cosmetic materials in court. The evidence of the victim girl is worthy of credit. Therefore, court can safely rely on her evidence to sustain conviction of accused u/s 12/18 of POCSO Act.
- 13. On the other hand, the learned Senior counsel Mr. A. Salam vociferously disputed the submissions made by the learned Addl. P.P. According to learned defence counsel the prosecution has miserably failed to substantiate the charges against accused person for sustaining conviction. The learned counsel at the first instance assailed the prosecution case on the ground that out of 9 witnesses examined by prosecution 5 witnesses namely-PW-3 Sanowar Hussain, PW-4 Sahanur Alam, PW-5 Abdus Samad, PW-6 Omme Salma and PW-7 Jalaluddin Ahmed have narrated a completely different story which has no connection with the allegations made in the FIR and that of evidence adduced by PW-1 and PW-2. All the five witnesses referred to above, have stated that there was a leakage of question paper in the school for which there was a quarreled between Majam Ali the informant and accused person as deposed by PW-3. The other witnesses PW-4, PW-5, PW-6 and PW-7 also consistently stated that there was leakage of question paper in the school and amongst the public informant Majam Ali was also there. The learned Senior counsel Mr. A. Salam further contended that the informant used his daughter as a sword to achieve his selfish interest as there was a guarrel between informant Majam Ali and accused regarding leakage of question paper in school for which he had withdrawn his daughter from the said school and filed a false and fabricated case against the accused which has not been supported by majority of prosecution witnesses. Moreover, the learned counsel contended that the alleged cosmetic items like lipstick, kajal etc were not seized either from the alleged victim girl or from the accused but from one Majibor Rahman. Therefore, it is not proved that those cosmetic items were offered by accused to the victim girl. As such, on the basis of such uncorroborated evidence it is totally unsafe to sustain conviction of accused person. Since most of the prosecution witnesses negated the prosecution case it can be safely inferred that the informant and his daughter PW-1 and PW-2 intentionally adduced exaggerated and fabricated evidence against the accused to tarnish his image in the society because of the quarrel of informant Majam Ali with the accused person. Moreover, it is contended by learned defence counsel that the daughter of the accused person has been suffering from serious ailments. He is required to consistently take care of his daughter. In the event accused is convicted, his innocent family members will suffer a lot. Therefore, the learned Senior counsel Md. A. Salam vehemently argued that it is a case wherein court can record the judgment of acquittal.

- 14. Having heard the strenuous argument of the learned counsels appearing for both sides, this court is forced to read the entire prosecution evidence as well as the law on the subject for arriving at a just decision in the case.
- 15. True it is that PW-4 Sahanur Alam, PW-5 Abdus Samad, PW-6 Omme Salma and PW-7 Jalaludin Ahmed have deviated in court from their earlier version narrated by them before police but fact remains that three prosecution witnesses namely- PW-1, PW-2 and PW-9 the I/O have adduced positive evidence in court. On perusal of the FIR (Ext.1) the statement of the victim girl recorded by Magistrate u/s 164 Cr.P.C. (Ext.3) and the evidence of PW-1 the informant and the victim girl (PW-2) in court corroborated the allegations made in the FIR. In the FIR it is clearly alleged that the daughter of informant (X) (real name withhold) has been reading in Class-X in Crescent Academy and adjacent to it there is a college by the name of Janapriya Junior College where Abdul Ali is a Lecturer in English but by taking advantage of private tuition accused subjected sexual and mental torture on the daughter of informant as a result she has been mentally broken. Accused not only offered cosmetics but also offered his love to her on her way to the school and back home as well as in school Common Room.
- 16. Now, it is to be seen whether the facts narrated in the FIR has been corroborated by the prosecution witnesses in court. PW-1 Majam Ali in his evidence on oath fully reiterated the fact narrated in the FIR. He in his evidence unequivocally stated that accused by taking advantage of his position as a teacher called his daughter to the Class Room alone, and subjected her sexual torture by proposing to love her and also to hold her hand and offered gifts inside her note book. He also stated that his daughter was born on 06.09.2002 and appeared in the final HSLC examination in the year 2019. Ext.1 is the FIR and Ext.1(1) is his signature. Ext.2 is the birth certificate and Ext.2(1) is the photocopy of the birth certificate compared with the original.
- 17. In his cross examination he stated that the incident occurred on 10.05.2018 and the FIR was lodged on 13.05.2018 but he did not explain the cause of delay in lodging the FIR. He also stated that apart from his daughter, he also heard it from her colleague. He denied the defence suggestion that accused did not subject sexual torture on his daughter by offering her love and also offering gifts in the class room. He also stated that he do not have any personal grudge against the accused person.
- 18. Now, let me examine the evidence of the victim girl (PW-2). In her evidence the victim girl (X) (real name withhold) categorically stated that at the time of incident she had been reading in Class-X and she stated that accused called her to the common room and gives some lewd comments and sexual gesture towards her. Accused also did the same on her way to school and back home. Accused asked her to sit in his bike and move with him. Accused also offered her Kajal, Lipstick inside her book and when she refused to accept his offer, he stopped her on her way and when she went to picnic accused also asked her to have photograph along with him and she told all these facts to her father. Therefore, her father filed the FIR. She also stated that during investigation police brought

her to court and record her statement u/s 164 Cr.P.C. Ext.3 is the said statement and Ext.3(1), 3(2) and 3(3) are her signatures.

- 19. In her cross examination also she narrated that accused called her to the teacher's common room and while he returned her English note book offered Lipstick inside the note book and at that time none of the other teachers were present in the teacher's common room. Accused offered her gift at 2 to 2:30 pm and at that time school was running but she could not remember the date. One day while she had been returning from school along with Salma, Nazma etc accused offered her to accompany him in his Bike. She also stated that she has been facing great mental disturbance from all side because she desires to pursue higher studies and want to move freely but now she is confused. She stated that whatever she stated before Magistrate u/s 164 Cr.P.C. and in court is as tutored by her father. But immediately thereafter she denied the defence suggestion that no such incident had happened and she deposed false evidence in court as tutored by her father.
- 20. Now, after critical examination of the evidence of PW-1 and PW-2 with that of the contents of FIR (Ext.1) and the statement of the victim girl before Magistrate u/s 164 Cr.P.C. it is crystallizes that accused subjected sexual torture on the victim girl. From the evidence of the victim girl in court it is writ large that the victim girl has been suffering great mental turmoil as she has been fighting within herself after facing such unusual and abnormal conduct of her own teacher who offered her his unsolicited love and unsolicited gifts. She stated that she has desires to pursue higher studies. But on the other hand, she has been facing unsolicited love from a person none other then a person from whom she is suppose to acquire knowledge for English subject but in stead of teaching English subject the accused chose to offer her his love which has a serious impact on her tender mind. The victim girl in her statement u/s 164 Cr.P.C. clearly stated that while she has been reading in Crescent Academy in Class-X accused being a teacher of English subject, called her to his Office Room after the school and told her that he has immense love to her and also gave her sexual signal and he also offered her second Unit Test Question Paper telling her not to disclose it to any one and on the previous day of exam he offered her gift and on her refusal he hold her hand forcefully and gave the gift to her. She also stated that when they went to 'Bogamati' for picnic accused also offered to take photograph with him and when she refused he express his anger. Later on, he again called her to his room and asked her why she did not allow him to take photograph with him. She also stated that at the time of going to school accused also stopped her on her way and tried to take her in his bike by force even the conduct of accused forced her to change the rout. Accused also offered her lipstick, Kajal etc.
- 21. During investigation the I/O vide M.R. No.94/18 seized one Lakme Eye conic Kajal, one Lipstick name Kiss beauty Liquid matte and one Unit Test question paper (hand written) of English subject of Class-X. I/O also seized the original birth certificate of the victim girl vide M.R. No.93/18. Both the seizure lists have been duly proved in court as well as the seized materials. It is a fact that the person Majibor Rahman, the Principal of Crescent Academy to whom Lipstick, Kajal and English question paper of Unit Test have been handed over by the victim girl and he handed over the same

to police during investigation has not been examined by prosecution as witness. But this does not any way affect the merit of the prosecution case as the victim girl clearly stated that accused offered her Lipstick, Kajal and question paper of English subject before the Unit Test. Therefore, the evidence of the victim girl found to be very genuine and credible and there is no reason to disbelieve her evidence as false. Moreover, the contention of the learned counsel that the victim girl has been tutored by her father bears no significance in view of the fact that she is a girl of Class-X at the relevant time and has sufficient understanding and therefore, cannot be said that she blindly memorized false evidence in court as tutored by her father.

- 22. The fact that the girl is vulnerable being a student and the accused being her English teacher is in a dominant position. She do not gather courage to reveal/speak out the misdeed/sexual harassment perpetuated on her by accused person being her teacher. She cannot instantly agitate against the sexual advances and gestures/words expressed by accused towards her because she lack self confidence being in an insecure position who nurtures fear in her mind that if she agitate instantly in the school, it may led to unwarranted situation which she do not want and this reason may dissuade her from speaking out. Nevertheless, unable to keep her sufferings suppressed she divulge the fact to her father who finally filed the FIR.
- 23. In this context, the argument of the learned counsel for the accused that three days delay in lodging the FIR raises suspicion about the authenticity of the incident and court may take note of such unexplained delay in lodging the FIR. However, the delay as pointed out by the learned defence counsel in lodging the FIR appears to be insignificant as the society in which the victim lives and the mental pressure the victim has been suffering throw out 2/3 days delay in lodging the FIR is immaterial as she has been facing such a crime at the hands of her own teacher. The victim naturally take time to speak out particularly the sexual harassment and atrocity committed in the work place i.e. in the school. So, the deep rooted fear nurtured by her in her mind dissuade her in divulging the truth and this is no reason to discard her story as unworthy of credit.
- In her evidence as well as in her statement before Magistrate u/s 164 Cr.P.C. she narrated that such incident occurred not in one occasion but on different occasions. He disturbed her by offering his love and cosmetic material inside the Class Room as well as forcing her to go with him in his Bike, to take photograph with him in picnic and also giving hand written question paper to her, asking her not to disclose it to any one all constitute sexual harassment upon a child.
- 25. In the cases of this nature, court should not discard the 2/3 days delay in lodging the FIR in a pedantic manner but court needs to take liberal approach understand the realities behind a woman's silence. In cases, such as this, a completely technical approach will lead to catastrophe. Court need to assess the situation from practical point of view and let the natural justice and good consigns prevail. In order to ensure equality and demand for justice court need to hear the cry of the victim. When the woman fights for equality and protection of rights, she is setting the battle field and fighting for every woman and court must hear the voice of woman from the point of view of the

victim to ensure justice. If the court let loose the accused merely on technicalities then it will encourage the perpetrator to commit the same crime against another woman and the cycle will continue. It is worth mentioning that during the course of argument the learned counsel strongly contended that PW-3, PW-4, PW-5 and PW-6 have spoken only about leakage of question papers. But the informant and his daughter gave it a colour of sexual harassment when there is a quarrel between informant and accused regarding the leakage of question paper.

- 26. However, after careful consideration of the evidence of these witnesses from PW-3 to PW-6 with that of the evidence of PW-1 and PW-2 it is crystal clear that these witnesses supported the version of the victim to the extent of leakage of question paper but it has close relation with the facts stated by the victim girl in the course of her evidence because she in her evidence clearly stated that accused had offered her a hand written question paper of English subject before the Unit Test examination as a mark of his love to her and the said question paper was also seized by I/O during the course of investigation along with lipstick and eye conic kajal offered by accused to victim girl. Therefore, this part of evidence of witnesses namely-PW-3 to PW-6 appears to have fully corroborated with that of the evidence of the victim girl that accused not only offered her cosmetic materials but gave her question paper of English subject before the Unit Test. As such, this court do not find any reason to disbelieve or discard the evidence of PW-1 & PW-2 as unworthy of credit. Their evidence is very much natural and trustworthy which inspires confidence in the mind of the court. It is seen that the accused put a strain in the age old sweet relationship between the student and teacher bringing disrepute to the profession of teaching which do not auger well.
- 27. Now, it is settled position of law that court can record conviction of accused based on sole evidence of the prosecutrix provided that it is worthy of credit. In the present case, as discussed above, the evidence of victim is found to be trustworthy and no part of her evidence can be thrown out as false. Her evidence has been corroborated by the evidence of PW-1 as well as the evidence of the I/O (PW-9) in material particular. The minor contradiction here and there will not any way affect the merit of the prosecution case because of human frailty. It cannot be expected that a witness can reproduce everything in court in cinematographic manner.
- Admittedly the words uttered by accused and the gestures shown by him and repeated and constant attempts to come into contact with the girl and the gifts offered by him to her squarely attracts the ingredients of the offence u/s 11 of POCSO Act. The accused is a matured person of 48 years old and a teacher of English Subject has no occasion to offer his love to his own student being a married person having children and disturbing her frequently on her way to school and back home by offering her to accompany him in his Bike etc constitute questions of fact involving "sexual intent" as per Explanation to Section 11 of POCSO Act. Accused is not a student or classmate of the victim girl to offer his love to her. He is a responsible teacher holding respectable and superior position but his gesture of offering gratification in the form of cosmetic items and question paper to her certainly attracts the ingredients of the offence within the definition of Section 11 of POCSO Act attracting punishment u/s 12 of POCSO Act. It

is to be noted that though accused was charged u/s 12/18 of POCSO Act but the foregoing discussions made it clear that accused committed the offence u/s 11 punishable u/s 12 of POCSO Act. His acts were not just attempts but he did the offence against the victim girl. Therefore, accused is found guilty only u/s 12 not u/s 18 of POCSO Act. As such, accused is discharged from the offence u/s 18 of POCSO Act. But convicting him only u/s 12 of POCSO ACT.

29. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case, and the age of the accused person namely Abdul Ali who is 48 years old and the nature of the offence committed by him against a tender age girl, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused person.

SENTENCE HEARING

- 30. I have heard the accused person on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused Abdul Ali is a married person having his wife and children; if he is sent to jail, his innocent family members will suffer for no fault of them. Hence he pleaded to take a lenient view while awarding sentence.
- 31. Heaving considered all the attending facts and circumstances of the case, particularly the extenuating and mitigating circumstances and the punishment prescribed in section 12 of POCSO Act, 2012 accused is convicted and sentenced to undergo rigorous imprisonment for a term of 2 (two) years and fine of Rs.2000/- (two thousand) i/d S/I for another 3 (three) months. The fine amount if deposited be paid to the victim girl as compensation as provided in section 357 (3) Cr.P.C.
- 32. The period of detention, if any, undergone by accused person during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.
- 33. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 34. Let copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 35. Let the case record be consigned to record room after completing the formalities.
- 36. Given under my hand and seal of this Court on this 25th day of September, 2019 at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta

APPENDIX

- 1. The prosecution has examined the following 9 nos. of witnesses :-
- PW-1 = Md. Majam Ali, the informant.
- PW-2 = Victim girl(X).
- PW-3 = Sanowar Hussain.
- PW-4 = Sahanur Alam.
- PW-5 = Abdus Samad.
- PW-6 = Omme Salma.
- PW-7 = Jalaluddin Ahmed.
- PW-8 = Sirajul Islam.
- PW-9 = Rufu Chetia, the I/O.
- 2. The prosecution has exhibited following document :-
- Ext.1 = is FIR.
- Ext.= 1(1) = Is the signature of informant Majam Ali.
- Ext.2 (1) = is the photo copy of birth certificate compared with original.
- Ext.3 = is the 164 Cr.P.C. statement of victim girl.
- Ext.3(1), 3(2) & 3(3) = are the signatures of victim girl.
- Ext4= seizure list.
- Ext.4(1) = is the signature of witness Sanowar Hussain.
- Ext.4(2) & 4(3)= are the signatures of I/O.
- Ext.5= is the seizure list.
- Ext.5(1)= is the signature of witness Shahanur Alom.
- Ext.5(2)= is the signature of witness Jalaluddin Ahmed.
- Ext.5(3)= is the signature of I/O Rufu Chetia.
- Ext.6= is the sketch map.
- Ext.6(1)= is the signature of I/O Rufu Chetia.
- Ext.7= is the charge sheet.
- Ext.7(1)= is the signature of I/O Rufu Chetia.