Date of Proceeding	Order or other proceeding	Signature of Court	Office action taken on order with date and dated signature of pleaders of parties when necessary
31.10.2019	Accused person namely — Babul Laskar is present along with his Ld. Counsel, Shri. A. A. Laskar. The Judgment is delivered and pronounced in the open Court today and a separate copy of Judgment is tagged with the case record. I hold that the prosecution has failed to establish the prosecution case beyond reasonable doubt and accordingly accused person namely — Babul Laskar is acquitted and set at liberty forthwith. A copy of the Judgment be sent to the District Magistrate U/S 365. Bail bond of the accused shall remain in force for the next 6 (six) months u/s 437(A) Cr. PC. The Sessions Case No. 02/2019 is disposed of on contest.		

IN THE COURT OF SESSIONS JUDGE ::::: DIMA HASAO, HAFLONG.

SESSIONS CASE NO. 02/2019

(Under Section 354 of IPC R/W Section 8 of the POCSO Act)



The State of Assam

-Vs -

Babul Laskar

..... accused,

PRESENT:-

Shri. Abhijit Bhattacharyya

Sessions Judge, Dima Hasao.

COUNSELS:-

Sri A. Chakravarty, Ld. PP for the State.

Shri. A. A Laskar, Ld. Advocate for the accused.

Date of Argument: 16.09.2019

Date of Judgment: 31.10.2019

JUDGMENT

The prosecution case, in brief, is that one Shri. David Tonsing, lodged an FIR before the OC, Haflong Police Station on 19.12.2018 at about 3:45 pm to the effect that the accused Babul Laskar had molested his daughter (victim) aged about 15 years on 19.12.2018 at about 3:00 pm. In the aforesaid FIR, it was alleged that the informant and his daughter visited the shoe shop owned by the accused at Haflong Bazar. As his daughter was searching for her likings at the shop of the accused, the informant went out to a nearby shop leaving his daughter alone with the shop keeper. Suddenly the informant heard his daughter crying and he ran towards her. Then the informant's daughter told him that the shop keeper had touched her buttocks and other private parts.

After receipt of the above FIR a case was registered vide Haflong PS case No. 94/2018 U/S 354 of IPC R/W section 8 of the POCSO Act. During the course of investigation, based on the statement of the informant and the victim, the accused was arrested. The statement of the victim was also recorded u/s 164 of Cr. PC. On completion of investigation, the I.O filed chargesheet against accused Babul Laskar U/S 354 of IPC R/W section 8 of the POCSO Act.

My predecessor in office framed charges u/s 354 IPC R/W section 8 of POCSO Act against the accused. Those charges had been read over, interpreted and explained to the accused to which the accused pleaded not guilty and claimed to be tried. The Prosecution examined as many as 7 (seven) witnesses including the M.O and the I.O. The accused was generally examined on the circumstances coming up in the evidence of the PWs. The accused pleaded total denial and stated that he had been falsely implicated in the case.

POINTS FOR DETERMINATION:

1. Whether the accused person namely, Babul Laskar assaulted or used criminal force upon the victim/ Prosecutrix intending to outrage or



knowing it to be likely to outrage her modesty and thereby committed the offence u/s 354 of IPC?

2. Whether the accused Babul Laskar with sexual intent touched the buttocks and other private parts of the victim/ prosecutrix and thereby committed the offence of sexual assault under section 8 of the POCSO Act?

DISCUSSION ON THE POINT FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASONS:

PW -1 is the Prosecutrix aged about 15 years. During her deposition in court PW -1 stated that she had appeared in HSLC Examination in the year 2019. She stated that on 19.12.2018 she had gone to the shop of the accused accompanied by her father to buy a pair of shoes and when she was searching for shoes her father had gone out of the shop. She also stated that she had given her statement before the Magistrate u/s 164 of Cr. PC. She stated that in the said statement, she had said that the accused Babul Laskar had touched her buttocks and other private parts. Though at first she thought that it was accidental but when the accused repeated his act the Prosecutrix cried and called her father. PW -1 had proved her statement given before the Magistrate u/s 164 Cr. PC as Ext -2. However, PW -1 stated that she had given the statement out of prejudice against the shop keeper against whom she had a clash.

During her cross examination PW -1 stated that she had a heated altercation with the accused shopkeeper while bargaining the price for a pair of shoes that she had intended to purchase. She stated that the shopkeeper in this connection had rebuked her for which she got offended and started crying. She also looked for her father who was standing by at a distance of around 10 metres at a nearby shop. PW -1 told her father that the shopkeeper is not a good person because he scolded her badly. PW -1 further stated that she did not know why her father had filed the case. She stated that she did not remember what she had stated before the Magistrate. She further stated that the statement before the Magistrate that the accused Babul Laskar had touched her private parts and her buttocks was not true.

She also categorically stated that the accused Babul Laskar did not make any sexual advances at the time she was inside his shop.

PW - 2 is Shri. David Tonsing, the father of the victim (Prosecutrix) as well as the informant. PW - 2 stated in his deposition that he knew the accused who has a shoe shop. He stated that on the date of occurrence he had gone with his daughter to the shop of the accused to buy a pair of shoes for his daughter. He also stated that he lodged the FIR Ext - 1. Thereafter the said PW - 2 was declared hostile.

During his cross examination PW-2 stated that he did not know who had drafted the FIR nor the contents thereof. He stated that he was outside the shop and was at a distance of 10 metres away from the shop of the accused Babul Laskar. PW-2 categorically stated that his daughter (Prosecutrix) did not tell him about the accused Babul Laskar touching her private parts and her buttocks. He also stated that he did not tell any of the nearby shopkeepers regarding the alleged occurrence. He also admitted that he did not see the incident.

PW-3 is Shri. Tinku Nath who is a business man having a shop adjacent to the shop of the accused. PW-3 stated that he knows the accused Babul Laskar who has a shop adjacent to his shop. He stated before the Police that he was not aware of any incident that had taken place inside the shop of the accused. This witness was declared hostile by the Prosecution.

Both PW - 4 Biswaranjan Ghosh and PW - 5 Uttam Roy have shops adjacent to the shop of the accused. However both these witnesses stated that they had not seen the incident. The counsel for the defence declined to cross examine both these witnesses.

PW-6 is Dr. Mousumee Bhattachejee working as Senior M&HO at Haflong Civil Hospital. PW-6 has proved her report as Ext-4 and had opined that no abnormalities were seen at the time of the examination of the victim/ Prosecutrix.

PW-7 is Shri. Ramesh Rajiyungsa, Inspector of Police who was the I.O of the case. Amongst others PW-7 stated that he investigated Haflong PS Case No. 94/2018 on being entrusted by the OC

Haflong PS. On completion of investigation PW - 7 filed charge sheet Ext - 5 against accused Babul Laskar.

During his short cross examination PW - 7 stated that there were no eye witnesses apart from the victim / Prosecutrix. He denied the suggestion that he did not carry out the investigation properly and that there was no material u/s 354 IPC R/W section 8 of POCSO Act.

In the instant case out of 7 (seven) prosecution witnesses, PW-6 is the medical officer whereas PW-7 is the investigating officer. Out of the remaining five witnesses PW-2, PW-3, PW-4 and PW-5 did not state anything incriminating against the accused Babul Laskar. Therefore the evidence of PW-1 (victim/ Prosecutrix) is very important.

I have carefully gone through the evidence of PW - 1. However a close and careful scrutiny of the evidence of PW - 1 would reveal that even during her examination in chief, she stated that she had given her statement before the Magistrate under section 164 of Cr. PC out of prejudice against the accused Babul Laskar with whom she had a clash. Moreover, during her cross examination, she stated that she had a heated altercation with the accused while bargaining for a pair of shoes. She also stated that she cried as the shop keeper had rebuked her for which she got offended. PW - 1 also stated that she told her father that the shopkeeper was not a good person as he scolded her badly. She also stated that she did not know why her father had filed the case/ FIR. Further, PW - 1 categorically stated that the statement made before the Magistrate that the accused had touched her private parts and her buttocks was not true.

The above is the threadbare discussion of the prosecution evidence on record.

I have gone through the entire case record including the evidence. I have also heard Ld. PP, Dima Hasao as well as Ld. Counsel for the accused.

In a criminal trial the prosecution has to prove its case beyond reasonable doubt. However, from the above discussion I have come

to the conclusion and finding that the prosecution has failed to bring home the charges against the accused Babul Laskar beyond reasonable doubt.

In view of the aforesaid facts and circumstances of the case, the accused Babul Laskar is acquitted and set at liberty forthwith.

A copy of the Judgment be sent to the District Magistrate U/S 365 of Cr. PC.

Bail bond of accused shall remain in force for the next 6 (six) months u/s 437(A) Cr. PC.

Given under my hand on this 31st day of October, 2019.



Sessions Judge, Dima Hasao.



APPENDIX:-

PROSECUTION WITNESSES :-

- 1. PW 1 Prosecutrix
- 2. PW 2 Shri. David Tonsing
- 3. PW 3 Shri. Tinku Nath
- 4. PW 4 Shri. Biswaranjan Ghosh
- 5. PW 5 Shri. Uttam Roy
- 6. PW 6 Dr. Mousumee Bhattacharjee
- 7. PW 7 Shri. Romesh Rajiyungsa, Inspector of Police

PROSECUTION EXHIBITS:

- 1. Ext 1 FIR
- 2. Ext 2 Statement of the Prosecutrix u/s 164 Cr. PC.
- 3. Ext 3 Sketch Map
- 4. Ext 4 Medical Report
- 5. Ext 5 Chargesheet

Sessions Judge,