DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:-

Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 18th day of June, 2019.

SPECIAL (P) CASE NO: 62 OF 2017

Under Section

10 of the Protection of Children
from Sexual offences Act, 2012.

State of Assam

-Versus-

Sri Subodh Kar

..... Accused Person.

This case was taken up for final hearing on 04.06.2019 in the presence of **Sri Basanta Gogoi......** Advocate for prosecution side. **Sri Rajib Buragohain** Advocate of the accused.

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<u>JUDGMENT</u>

In this case the accused person is facing trial under section 10 of the Protection of Children from Sexual Offences Act, 2012.

- In this case FIR was lodged before Sonari P.S. on 16-09-2017 by one Smti. 1. Moni Karmakar with the allegations that her daughter 'S' (name not mentioned) is $11 \frac{1}{2}$ years old and a primary school student. That, the accused since long time physically harassed the minor daughter of the informant by touching private parts etc. That, the minor daughter of the informant was reluctant to go to school for which when she asked the matter, her minor daughter stated her about the incident involving the accused.
- In pursuance to lodging of the FIR, Sonari P.S. case no. 217/17 was 2. registered and police started investigation. After completion of investigation police forwarded charge-sheet against the accused u/s 8 of the Protection of Children from Sexual Offences Act, 2012. On being summoned the accused appeared before court. The charge u/s 10 of the Protection of Children from Sexual Offences Act, 2012 was framed against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Prosecution examined five witnesses.
- The accused person was examined U/S 313 Cr.P.C, where he denied the 3. case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

Points For Determination in this case are:-4.

i) Whether the accused, a few days prior to lodging of the FIR by taking advantage of his position, committed aggravated sexual assault on the minor naraideo, Sonardaughter of the informant who is a student of Banphera Govt. Primary School?

5. DISCUSSION DECISION AND REASONS FOR THE DECISION:

Before discussing of the evidences on record and before arriving at a decision, let us now look in to two vital legal aspect connected to this case. Here in this case the accused is facing trial primarily under the Protection of children from Sexual Offences Act 2012.

Section 29 of the act is as follows:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and Section 9 of this act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Here as per the procedural law the trial court shall presume the accused guilty of the offence he is facing trial, unless disproved by him.

Section 4 of the Indian Evidence Act 1872 defines the term "shall Presume" as follows: Whenever it is directed by this act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

Now, behind this background, we have to come to a conclusion in this case.

- 6. Under above circumstances, now let us discuss evidence on records to the point for determination.
- 7. In this case the alleged victim deposed that incident occurred two years ago. That, accused is her teacher. That, as her teacher/accused used to fond of her for which other students got angry and teased her. That, accused did no offence. That, after getting angry she talked to her mother falsely.

In cross-examination this PW deposed that accused encouraged her when Special Judge she used to do good in study.

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- Here I have considered the evidence of the alleged victim and found that 8. according to her, accused did no offence and as a teacher of her he used to love her. The evidence of the alleged victim clearifies that, according to her accused did no offence. I have considered the evidence of the alleged victim and found that on record concerning evidence of the victim there is nothing in regards to the point for determination.
- 9. The PW 1 is the informant/mother of the alleged victim and she in her evidence deposed that the present age of her daughter is 13 years. In the year 2017 her daughter was reading at Benphera L.P. School. Her daughter was born in the year 2005. About 8/9 months back one day, when her daughter showed her reluctance to go to school, when she asked about the matter she was told that accused used to misbehave her, touches her breast etc. After knowing about the incident she went to school along with her husband and two other women. She informed the matter to other school teacher and staff. Head Teacher asked accused Subodh to beg pardon if he commits any wrong. Thereafter, she informed the matter to VDP. A village meeting was organized. That, in the village meeting accused scolded her daughter as 'gadhi'. In the meeting classmates of her daughter gave their statement supporting the allegations of her daughter.

In the cross-examination this PW deposed that she was selected in the school managing committee of Banphera L.P. School. However, the D.I. of School has dissolved the said committee as it was illegal. Accused had made complaint before the D.I. Classroom of class-III, Class-IV & class-V situated near each other. That, her daughter used to inform that accused asked her to read sincerely. That, in the village meeting except Rinki other student of her class denied to support the allegations of her daughter about the accused.

I have considered the evidence of the PW 1/informant and found that the 10. basis of the evidence of PW 1 is that her daughter reported the matter to her. The haraideo, Sonalevidence of the PW 1 is based on the information given by her daughter. From the

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cross-examination of the PW 1 it is revealed that the accused used to ask the victim to read sincerely.

11. The PW 2 in his evidence deposed that on the day of the incident at about 12:00 noon while he was standing in front of his house he saw Smti. Moni Karmakar was coming out weeping. That, she came to him and told that accused misbehaved her daughter by touching her body in the classroom. On this matter a meeting was organized on the next day. In the meeting the daughter of the informant reported that accused touched her body. However, other student stated that they have not noticed any such incident. After discussion the meeting found the accused not guilty. On being dissatisfied with the decision of the meeting Moni Karmakar filed this case.

In the cross-examination this PW deposed that in the meeting all 21 students of the class of 'S' were asked individually but no one has involved the accused with the allegations. That, he has seen one SMS came to the mobile of the accused demanding Rs.2 lakhs from the accused. On the next day of meeting some posters were hanged near the school. That, on allegations of misbehavior of 'S', Moni Karmakar has complained against brother of Rinki Chaora and a village meeting was organized. In that meeting allegation was found to be false. That, Moni Karmakar is having habit of bringing false allegations against other villagers and they have warned her to resist.

12. Here also the PW 3 was informed about the incident by the mother of the alleged victim/PW 1, that, accused misbehaved her daughter. The PW 3 has no direct knowledge about the incident. In the cross-examination of PW 3 yielded that mother of the informant had earlier also lodged a false complaint against the brother of Rinki Chaora. This PW clearly deposed that the informant has habit of filing false complaint.

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In the cross-examination this PW deposed that now 'S' told her that the incident is a false one and false case was lodged. That, $1\frac{1}{2}$ year ago accused joined their school as SMC requested at higher level to transfer the accused to their school as he is a good teacher in Mathematics. Moni was not happy in this regard. That, she aware that 'S' and Moni pressurized Rinki in this regard. That, all students told that they have not seen anything done by the accused as alleged. That, in the meeting it was held that the allegation is a false one. Moni told her that she should depose evidence favouring prosecution but she told that she will depose the truth. That, they came to know that this is a false case as 'S' told them about this.

I have considered evidences and found that in this case the alleged victim clearly deposed that accused did no offence. The evidence of the alleged victim contain nothing concerning the point for determination. The independent witness *i.e.* PW 4 in her cross-examination revealed that 'S'/victim told her that the incident is a false one and false case has been lodged. As per this PW Moni asked her to depose evidence in her favour. The cross-examination of another independent witness PW 2 brings out that the informant has a habit of bringing false allegations against other villagers. The PW 3 was reported about the incident and has no direct knowledge.

- 14. I have considered the cross-examination portion and the evidence of the alleged victim and found that that the accused has disproved the case of the prosecution for the following reasons
 - i) the alleged victim did not adduce any evidence against the accused,

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- ii) the evidences of independent witnesses yielded that the victim told PW 4 that it is a false case.
- iii) the evidence of the PW 2 yielded that informant has a habit of lodging false allegations.

Considering the evidence of alleged victim, it is clear that there is no evidence on record concerning point for determination.

Under the above circumstances, as the accused has disproved the case, accordingly, he is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision 437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 18th day of June 2019.

(S.I.Rahman)

Additional Sessions Judge.

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Appendix

Prosecution Witnesses.

- Sl. 1---- Prosecution Witness 1 --- Smti. Mani Karmakar.
- SI. 2---- Prosecution Witness 2 --- Abul Hussain.
- SI. 3---- Prosecution Witness 3 --- Chandra Tanti.
- Sl. 4---- Prosecution Witness 4 --- Sila Gowala.
- Sl. 5---- Prosecution Witness 5--- Sabita Karmakar.

Prosecution Exhibits.

Exhibit 1---- Ejahar

Exhibit 1(1)- Signature of the P.W1.

Defence witness.

Nil.

Defence Exhibit.

Nil

(S.I.Rahman)
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