IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.26/2016 U/S 447/354 IPC, R/W Section 12 of POCSO Act

Present : Mr. Dhrupad Kashyap DasSessions Judge, Morigaon.

State of Assam

Vs.

Sri Bishnu Sarkar Accused

Date of Charge :- 02.01.2017.

Date of recording evidence :- 28.02.2017, 19.04.2017, 21.07.2017 &

05.09.2017.

Date of Argument :-08.01.2018, 20.01.2018, 29.01.2018,

07.02.2018 & 17.02.2018.

Date of Judgment :- 26.02.2018.

Appearance for the Parties

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. B. H. Talukdar, Ld. Advocate,

Mr. Satram Das, Ld. Advocate,

JUDGMENT

Facts of the Case:

The prosecution case in brief as reflected in the ejahar that on 06.06.2016 at around 5.00 P.M. the accused Bishnu Sarkar entered into the house of the informant and forcefully tried to outrage the modesty of the minor daughter (victim) of the informant, aged about 12 years, a student of Class – VII. It is also reflected in the ejahar that while the above-named accused tried to commit sexual harassment upon the victim, she raised alarm and then the accused fled away from the place of occurrence.

On the next day of occurrence of the incident, the informant went to Mayong P.S. and lodged an F.I.R. On receipt of the F.I.R., the then O/C

Mayong P.S. registered a case vide Mayong P.S. Case No.93/16, U/s 448/354 (B)/511 of IPC, read with Section 6 of POCSO Act.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence. The I.O drew up the sketch map of the P.O. Thereafter, the I.O. recorded the statement of the victim as well as other material witnesses and also got the victim medically examined. Thereafter, the I.O. brought the victim to the learned Court for recording her statement U/s 164 Cr.P.C. The I.O. arrested the accused person and produced him before the learned Court, wherefrom, he was remanded to judicial custody. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the abovenamed accused with allegation of offence punishable U/s 12 of POCSO Act. After submission of charge-sheet, the accused person was let off on Court bail. Thereafter, on appearance of the accused person before the learned Court, he was furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record framed charge U/s 447/354 of IPC, read with Section 12 of POCSO Act against the accused person, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

2. <u>Point for determination</u>:

- (i) Whether the accused on the eventful day i.e. on 06.06.2016 at around 5.00 P.M. at village Chotogarjan (Bakalibori) under Mayong P.S. in the district of Morigaon, committed criminal trespass by entering into the compound of the complainant with intent to commit an offence?
- (ii) Whether the accused on the same day, time and place used criminal force to the minor daughter of the complainant intending to outrage her modesty?
- (iii) Whether the accused on the same day, time and place committed sexual harassment as defined U/s 11 of the POCSO Act, upon the minor daughter of the complainant?

- 3. In this case prosecution has examined as many as 6 (six) PWs including the most material witnesses of this case. After completion of recording the evidence of the PWs, the accused was subjected to examine as warranted U/s 313 Cr.P.C. with respect to the incriminating materials that surfaced against him in the evidence on record. The accused declined to adduce defence evidence.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

5. DISCUSSION, DECISION AND REASONS THEREOF

In this case, it is alleged by the prosecution that on the eventful day the above-named accused by entering into the house of the informant tried to commit sexual assault upon the minor daughter (victim) of the informant.

(a) To prove this fact, the prosecution has examined PW-1 (Sri Parimal Biswas), the informant. He in his evidence has stated that the victim Miss -X (real name is kept concealed to save her from infamy) is his daughter. He knows the accused who is from their village. According to PW-1, the alleged incident occurred about 8/9 months ago. At the time of occurrence of the incident, his daughter was 12 years old. PW-1 further stated that on the date of occurrence of the incident, in the evening, he was thrashing rice from paddy at a little distance from his house. While he was working, his daughter Miss - X rushed to him and told him that the accused person by illegally entering into her room outraged her modesty. She (his daughter) told him that the accused had pressed her breast and removed her clothes forcefully. She also told him that while the accused was doing so, she raised hue and cry, and at that time, her aunt Jayarani Biswas saw the incident and tried to catch the accused, but the accused ran away from that place by riding a bicycle which was standing outside. His daughter further told him that she and her aunt ran after the accused to catch him but the accused fled away from that place. PW-1 further stated that his daughter was crying at that time. So, he immediately came back home with his

daughter. After coming back home, he came to know the entire incident, and thereafter, he directly went to the house of the accused in search of him. PW-1 further stated that he reported and complained the matter to the family members of the accused person who was absent at that time in his house. A village meeting was conducted on the same night, but no positive result was found. Thereafter, on the next day morning, he went to Mayong Police Station to lodge an ejahar against the accused person. PW-1 further stated that he could not trace out the accused person. PW-1 proved Ext. 1 the ejahar, whereupon Ext. 1(1) is his signature. PW-1 further stated that Police visited his house and recorded his statement. Police also recorded the statement of his daughter. Police brought his daughter for medical examination. PW-1 further stated that his daughter was also produced before the Magistrate for recording her statement. Police also took a copy of birth certificate of his daughter. PW-1 further stated that he handed over the Xerox copy of the birth certificate of the original which is also brought today before this Court. PW-1 proved Ext. 2 the copy of the birth certificate of his daughter.

In cross-examination, PW-1 stated that he went to the Police Station and lodged the case on the next day of the occurrence of incident, at about 11.00 A.M. to 12.00 Noon. PW-1 stated that the ejahar was not drafted by him and he forgot, who wrote the ejahar. PW-1 further stated that the ejahar was written as per his instruction and it was read over to him. He did not mention regarding the village meeting in the ejahar. PW-1 further stated that the alleged incident occurred at about 5.00/6.00 P.M. on the date of occurrence. He did not mention the reason as to why there was little delay in lodging the ejahar. PW-1 further stated that at first, his daughter Miss-X rushed to him and reported about the incident, and thereafter, her aunt Jayarani Biswas also came to him. PW-1 further stated that Jayarani Biswas did not directly tell him about the incident. But, she (Jayarani Biswas) told about the incident to his wife. PW-1 further stated that his wife was also present with him at the time of thrashing paddy. PW-1 further stated that his daughter reported him after 6/7 minutes of the occurrence of incident. PW-1 further stated that after arriving at his house, he found some of the children of their neighbors, but he did not find any other matured person from the neighborhood. PW-1 further stated that there are near about 20 families near his house. PW-1 denied all the suggestions put to him by the defence.

(b) PW-2 (Miss - X), the victim, stated in her evidence that the informant of this case is her father. She knows the accused as he resides in their village. The alleged incident occurred about 9/10 months ago. At that time, she was 12 years old and studying in class VII standard. PW-2 further stated that on the date of occurrence of the incident, she was making preparation for prayer. Then, the accused person came to their house and asked her for a glass of water. Accordingly, she offered a glass of water. The accused had drunk half of the water of the glass and threw out the remaining portion. Thereafter accused again asked her for another glass of water and she did the same. The accused for the third time again asked her for a glass of water and when she offered him again the glass of water the accused caught hold her hands, and thereafter, he tried to remove her wearing cloths. PW-2 further stated that she was wearing a "Ganjee and a skirt". As soon as the accused tried to remove her clothes, she started crying. However, the accused put his hand on her chest and also threatened her by showing a "Dao". Then, she shouted for help and called her mother. Upon hearing her crying and shouting, her aunt "Khuri" rushed to the place immediately. Then, on seeing her aunt the accused ran away from that place by taking his bicycle. Thereafter, she told the entire incident to all her family members. PW-2 further stated that her father brought her to Police Station and lodged the case against the accused. Police asked her about the incident. PW-2 further stated that Police later on produced her before the Magistrate where her statement was recorded. PW-2 further stated that she stated the same thing before the Magistrate as stated in her evidence. PW-2 proved Ext. 3 her statement before the Magistrate, whereupon Ext. 3(1), Ext.3(2) and Ext. 3(3) are her signatures.

In cross-examination, PW-2 stated that the house of the accused is situated at a distance of about 100 mts. from their house. The accused never came to their house prior to the occurrence of the incident. PW-2 further stated that at the time of occurrence of the incident, her other

family members were not present in the house. PW-2 further stated that Nimai, Kusum, Santu, Aran etc. are her neighbors. PW-2 further stated that as soon as the accused caught hold her hand, he cried as well as shouted. PW-2 denied all the suggestions put to her by the defence.

(c) PW-3 (Smti. Jayarani Biswas) stated in her evidence that she knows the informant, his daughter Miss – X and the accused, as they are from their village. According to her, the incident occurred in the last year. PW-3 further stated that at the time of occurrence of the incident, the victim was 12 years old. PW-3 further stated that on the date of occurrence of the incident, in the evening, she heard shouting of the victim at her house. Upon hearing her (the victim) shouting, she immediately rushed to the house of the victim and after arrival at the house of the victim, she had seen the accused person embracing the victim girl. PW-3 further stated that the accused also removed her (victim) clothes and when she went to the house of the victim girl, the accused person ran away from that place. Thereafter, the victim girl caught hold her and started crying. PW-3 further stated that on being asked, the victim girl told her that the accused came to her house to have a glass of water and then the accused started to do illegal act with her.

In cross-examination, PW-3 stated that she was in her house when the incident occurred. Her house is adjacent to the house of the victim girl. PW-3 further stated that she heard the shouting of victim girl. PW-3 further stated that the parents of the victim girl were absent at their house at the time of occurrence of the incident. PW-3 denied all the suggestions put to her by the defence.

(d) PW-4 (Sri Parasuram Biswas) stated in his evidence that he knows the informant, his daughter Miss - X and the accused, as they are from their village. According to PW-4 the incident occurred in the last year. PW-4 further stated that on the next day of the occurrence of incident, he heard from their village people that the accused person committed some illegal act with the daughter of the informant. In cross-examination, PW-4 stated that he did not see the occurrence of the incident.

(e) PW-5 (Smti. Anjali Biswas) stated in her evidence that the informant is her husband and the victim is her daughter. She knows the accused person who is from their village. According to her, the incident occurred in the last year and at the time of occurrence of the incident the victim was about 12 years old. PW-5 further stated that on the date of occurrence of the incident, in the evening hour, she was working near her house. PW-5 further stated that at the time of occurrence of the incident, she was not present at her house, as she processing paddy at a little distance from her house. Then, after sometime her daughter came towards her by crying and on being asked, her daughter told her that the accused person came to their house and asked her a glass of water. Thereafter, accused person again asked for another glass of water and then by way of inducement he entered into the room of their house and embraced her by removing her clothes. PW-5 further stated that when the accused person caught hold her daughter, her daughter started shouting and upon hearing her shouting her aunt Jayarani Biswas who resides near their house immediately rushed to the place of occurrence and then the accused on seeing her ran away from the P.O. PW-5 further stated that her daughter also told her that she cried by holding her aunt. PW-5 further stated that her daughter narrated the incident to her and at that time she (her daughter) was crying. PW-5 further stated that she told about the incident to police. Later on, her husband lodged the case.

In cross-examination, PW-5 stated that the victim is her elder daughter and at the time of occurrence of the incident her daughter was 12 years old. Jayarani is her sister-in-law. PW-5 further stated that she did not see the occurrence of the incident. PW-5 denied all the suggestions put to her by the defence.

(f) PW-6 (Sri Rebot Chandra Baruah, the I.O.) stated in his evidence that on 07.06.2016, he was posted at Mayong Police Station as Attached Officer. On that day, an ejahar was lodged by complainant Parimal Biswas at their police station stating that, on 06.06.2016, in the evening, the

accused Bishnu Sarkar by illegally entering into his house made an attempt to commit immoral act with his minor daughter. Then, he was endorsed to investigate the case. Accordingly, he went to the place of occurrence and drew up the sketch map of the P.O. PW-6 proved Ext. 4 the sketch map, whereupon Ext. 4(1) is his signature. PW-6 further stated that he recorded the statement of the witnesses at the place of occurrence. He also examined the victim. PW-6 further stated that he sent the victim for medical examination. Thereafter, he brought the victim before the Magistrate to record her statement. PW-6 further stated that initially the accused was absconding. However, the accused was traced out and he was arrested. PW-6 further stated that he collected all the relevant documents in connection with this case. He (PW-6) also collected the injury report of the victim. PW-6 further stated that there was no injury of the victim as per the injury report. PW-6 proved Ext. 5 the medical report which was collected by him. PW-6 further stated that finally, upon getting materials against the accused, he submitted charge sheet against the accused U/s 12 of POCSO Act. PW-6 proved Ext. 6 the charge sheet, whereupon Ext. 6(1) is his signature.

In cross-examination, PW-6 stated that the incident took place on 06.06.2016, in the evening, and the ejahar was lodged on the next day at 11.20 A.M. PW-6 further stated that he started his investigation as soon as he received the ejahar. PW-6 further stated that he recorded the statement of the witnesses on 07.06.2016 and the victim was also examined on that day. PW-6 further stated that the distance between the house of accused and the victim was about ½ Km. PW-6 further stated that he recorded the statement of independent witnesses.

6. It is a well settled principle of law that conviction can be founded on the testimony of prosecutrix alone unless there are compelling reasons for seeking corroboration. The testimony of victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement. The well settled principle of law is that the corroboration as condition for judicial reliance on the testimony of the prosecutrix/victim is not a requirement of law but a guidance of prudence under given circumstances, where the testimony of a victim inspire full confidence and is found to be reliable, then Court should not find difficulty in acting the testimony of victim of sexual assault alone to convict an accused.

- 7. In the instant case in hand, the victim being the injured witness is also the eye witness of entire occurrence of the alleged incident since it happened with her. During evidence, she completely narrated the prosecution case that as to how the accused person intended to outrage her modesty by trespassing into her house and unlawfully remaining there with bad intention for the purpose of committing offence. The intention of the accused for such criminal trespass into the house of the victim was none but to attack, insult or annoy her. The intention of the accused is also reflected by his activities since he had repeatedly asked for glass of water for three times after throwing away the water of the glass once after another and finally when the victim had offered another glass of water for the third time; he caught hold her hands and tried to remove her wearing clothes. The accused also put his hand on her chest and when the victim started to cry for such illegal act of the accused, he threatened her by showing a dao. However, the victim was fortunate enough as her cry was heard by her aunt (PW-3), who arrived at the place of occurrence immediately after hearing her shouting and then the accused on seeing her aunt fled away from the place in a bicycle. The testimony of the victim has inspired full confidence upon the Court and her version was also so corroborated by her aunt (PW-3), who arrived at the place of occurrence when the accused was outraged her modesty. PW-3 is a direct evidence, who had heard the shouting and cry of the victim and she appeared at the place of occurrence immediately after hearing shouting of the victim. As soon as PW-3 arrived at the place of occurrence, she saw the accused outraging the victim girl by removing her clothes and on seeing PW-3 the accused fled away from the place. Hence, being the eye witness of the occurrence of the incident these witnesses displayed the prosecution case confidently which remained unrebutted during their cross-examination.
- 8. After the incident, the victim girl narrated the entire incident to her parents as soon as she found them. Therefore, the parents of the victim

also described the incident thoroughly without any hiccups. The mother of the victim (PW-5) though not seen the occurrence of the incident but found her daughter crying when she met her daughter just after occurrence of the incident.

- 9. Under the aforesaid facts and circumstances no suspicion arises as to the version of the victim with regard to the alleged incident which is supported by PW-3 and other witnesses. The testimony of the victim girl and the other vital witness PW-3 remained unshaken during their cross-examination. On overall perusal of the materials on record, prosecution has seen to have established the case beyond all reasonable doubt. Hence, the accused person is found guilty for the offences punishable U/s 447/354 IPC, read with Section 12 of POCSO Act.
- 10. After finding the accused person guilty under the aforesaid provision of law, he has been heard on the point of sentenced U/s 235 (2) of Cr.P.C. The accused person during hearing on sentenced has pleaded innocence denying his allegation and has also prayed for leniency in terms of awarding sentenced.

<u>SENTENCE</u>

11. On being heard the accused on sentenced, the accused person is convicted U/s 447 IPC and sentenced him to undergo R.I. for 3 (three) months and shall also be liable to pay fine of Rs.500/- (Rupees five hundred), in default thereof to further undergo S.I. for 1 (one) month. The accused person is also convicted U/s 354 IPC and sentenced him to undergo R.I. for 1 (one) year and shall also be liable to pay fine of Rs.10,000/- (Rupees ten thousand), in default thereof to further undergo S.I. for 3 (three) months. The accused person is further convicted U/s 12 of POCSO Act and sentenced him to undergo R.I. for 1 (one) year and shall also be liable to pay fine of Rs.10,000/- (Rupees ten thousand), in default thereof further undergo S.I. for 3 (three) months. All the sentences are run concurrently.

The period of sentenced to which the convict already undergone shall be set off.

- In this case, the victim girl deserves victim compensation U/s 357
 (A) Cr.P.C. The D.L.S.A., Morigaon shall decide the quantum of compensation to be awarded to the victim girl.
- 13. This Court further directs that in case the fine amounts are realized from the convict, the same shall be disbursed to the victim girl as damages.
- 14. A copy of the Judgment and order shall be furnished to the accused at free of cost. A copy of the Judgment and order shall also be furnished to the District Magistrate, Morigaon for information and to the Secretary, DLSA, Morigaon for compliance.

Judgment is delivered and pronounced in the open Court on this 26th day of February, 2018 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1: Sri Parimal Biswas,
- 2. PW-2: Miss Sangita Biswas,
- 3. PW-3: Smti. Jayarani Biswas,
- 4. PW-4: Sri Parasuram Biswas,
- 5. PW-5: Smti. Anjali Biswas,
- 6. PW-6: Sri Rebot Chandra Baruah,
- B. Defence witness: Nil.
- C. Prosecution Exhibit:
- 1. Ext.1: the ejahar.

- 2. Ext.2: the birth certificate of the victim.
- 3. Ext.3 :- the statement of the victim recorded U/s 164 Cr.P.C.
- 4. Ext.4 :- the sketch map.
- 5. Ext.5 :- the medical report.
- 6. Ext.6 :- the charge-sheet.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.