# CAUSE TITLE POCSO Case No. 58/15

Informant: Sri Krishna Keot,

S/o- Late Sitaram Keot,

R/o- Alubari Line, PS- Jalannagar, District- Dibrugarh.

Accused: Sri Kajal Das,

S/o- Late Gopal Chadra Keot,

R/o- Alubari Line, PS- Jalannagar, District- Dibrugarh.

# **ADVOCATES:-**

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Sri A. Borgohain, learned Advocate.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 58/15 G.R. Case No. 2094/15

> > State of Assam

-Vs-

Sri Kajal Das

Charges: Under Sections 4/8/18 POCSO Act.

Date of evidence on : 19-04-16, 17-05-16, 15-06-16, 14-07-16 & 06-10-16.

Date of argument : 30-03-17. Date of Judgment : 26-05-17.

#### **JUDGMENT**

- 1) Prosecution case as portrayed by the ejahar is that on 01-08-15, the victim, say 'X' returned from tuition at about 6:00 pm and informed her father Sri Krishna Keot (hereinafter the complainant) that her tutor Sri Kajal Das (hereinafter the accused) during tuition hours disrobed her by undoing her pant. He kissed her private parts, breast, face and forcefully tried to assault her sexually and with that intention, gagged her and forcefully pushed her on the bed in his attempt to commit rape. An ejahar regarding this incident was lodged by the complainant with Borbari Outpost and GDE No. 20 dtd. 01-08-15 was registered and the ejahar was forwarded to the police station which was registered as Dibrugarh PS Case No. 623/15 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short).
- 2) The investigating officer (IO in short) swung into action and embarked upon the investigation. He went to the place of occurrence and prepared Sketch-Map and recorded the statements of witnesses. He forwarded the victim for medical examination and for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). He submitted Charge-Sheet against the accused under Section 4 of the POCSO Act.
- 3) On appearance of the accused, copies were furnished. After hearing both the

- sides, a formal charge under Section 8 and under Section 4/18 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of seven witnesses including the IO whereas the accused adduced the evidence of two witnesses in defence. All the witnesses were cross-examined in rebuttal. The prosecution also exhibited several documents in support of the evidence. On the circumstances arising against him, the answers of the accused on the questions under Section 313 CrPC were that of total denial. The accused admitted that he was the victim's tutor.

#### **SUBMISSIONS:**

5) The learned Public Prosecutor Smti. Runumi Devi submitted that this case has been proved beyond reasonable doubt and stringent punishment ought to be inflicted to the accused. On the contrary, the learned defence counsel Sri A. Borgohain stated that a false case has been foisted against the accused. The accused deserves acquittal.

### **POINTS FOR DETERMINATION:**

- 6) On the backdrop of the rival contentions proponed at the bar, the points apposite to be decided in this case are:
  - 1. Whether on 01-08-15, at Alubari Line at Jalan Nagar, the accused committed sexual assault on the minor victim?
  - 2. Whether at the same time and place, the accused attempted to commit penetrative sexual assault on the minor victim?

#### **DECISION THEREON AND THE REASONS FOR THE DECISION:**

- 7) To decide the case in its right perspective, it is necessary to delve into the evidence.
- 8) The victim was asked several questions to assess her intelligence. My learned predecessor was satisfied that the victim was intelligent and could give rational answers.
- 9) The victim X testified as PW-1 that the accused person was a teacher and she used to take tuition in his house. The incident took place on a Saturday. At the time of the incident, she was a student of Class-V. The incident took place on the previous year. She used to go with Smti. Anupama Das to the accused person's house for her tuitions. The tuitions started at 6:00 pm every evening. The accused started taking tuition a week prior to the alleged

incident. On the evening of the incident, Anupama did not accompany her to the accused person's house as it was 6:00 pm. As she was alone on that evening, the accused took her inside his room for the class. Usually the accused used to take tuition on the verandah. But on that day, as she was alone, he took her inside his room. During class on that evening, while she was busy writing, the accused went near her and kissed on her lips and thereafter, he took off her panty and kissed on her tummy. At that time, she kicked the accused and left his house after collecting her books. She left crying and reached home and narrated about the incident to her mother and her mother in turn informed her father about the incident. Thereafter, her father went to the accused person's house and caught him and brought him back to their house and gave him two slaps. The neighbourers also assembled in their house and took the accused to the police station on the said night. She and her mother also accompanied her father to the police station on the said night. She narrated the incident to the police who recorded her statement. Police brought her to the hospital for examination on the 3<sup>rd</sup> day of the alleged incident. She also came to the Court for recording of her statement by the Magistrate. Ext. 1 is her statement recorded by the Magistrate and Ext. 1(1) and Ext. 1(2) are her signatures.

10) In her cross-examination, she stated that she started her tuition classes two weeks prior to the incident. The accused person's younger brother along with his wife and two children, his mother and the accused reside in the same house. The accused is an unmarried person and works as Anganwadi School teacher. His family members were present on the day of the incident, but she did not inform them about the incident. When she came out of the accused person's room, she did not find any of his family members outside the house. She further stated in her cross-examination that Smti. Sanjana Kalandi is a student of Class-VII and is known to her. She stated that she was preparing for her scholarship examination and so she had taken tuition classes from the accused person. On the day of the incident, the accused informed her that Sanjana Kalandi would also come to his house. She denied the suggestion by the defence that Sanjana was present before she reached the accused person's house on the alleged day of the incident. She also denied that Sanjana was also present in the same room with her on the alleged day of the incident. She also denied that Sanjana left the house only after her

departure.

- 11) Her evidence is corroborated and supported by the evidence of her mother who testified as PW-2 that her victim daughter is at present 12 (twelve) years old. The alleged incident took place on the previous year during summer season. On that day, at about 6:00 pm, her daughter went to the accused person's house for tuition classes. After returning home at about 7:00 pm, her daughter began to cry and then she asked her daughter why she was crying to which her daughter replied that she went alone to the accused person's house for the classes and no other student was present in the house. Then the accused kissed her, took off her panty and sought to touch his penis against her private part, but she pushed away the accused person and returned home. At that time, her husband was in his own shop situated near their house. She (PW-2) went to her husband and informed him about the incident. Learning about the incident, her husband went to the accused person's house and brought him to their house and gave him two slaps. Thereafter, her husband along with the other neighbours took the accused to the police station on the same day. She along with her daughter went to the police station. She narrated the incident to the police and her husband lodged an eihar against the accused person. On the 3<sup>rd</sup> day of the incident, the police took her to the Assam Medical College & Hospital, Dibrugarh for examination and also to the Court for recoding of her statement by the Magistrate. She also accompanied her daughter to the Court. Her crossexamination will be discussed at the appropriate stage.
- 12) The evidence of PW-1 and PW-2 is also supported and corroborated by the evidence of Sri Krishna Keot. He is the victim's father and he testified as PW-3 that his daughter is at present 11 (eleven) years old. The alleged incident took place in the month of August, 2015. On the evening of the incident, while he was in his shop, his wife went and informed him that when his daughter went to the accused person's house for her tuition class, the accused committed the shameful act on his daughter. This has been stated by the PW-2 that as soon as she heard about the incident, she went and narrated about the incident to her husband who was in his shop near the house. He testified that on receiving the information, he went to the accused person's house after he heard about the incident. He further testified that he found his elder brother in the accused person's house and his elder brother

caught the accused and they both took the accused person to their house and charged him about the incident. His daughter was also present at that time when he asked the accused about the incident. PW-3 further stated that his daughter told him that the accused kissed her and wanted to take off her panty. Thereafter, he slapped the accused person and took him to the police station. A person who resides near the police station wrote the ejahar for him according to his narrative. He also lodged the ejahar with the police. Ext. 2 is the ejahar and Ext. 2(1) is his signature. Police also recorded his statement at the police station. On the 3<sup>rd</sup> day of the alleged incident, police took his daughter to the AMCH for examination. His daughter was also forwarded to the Court for recording of her statement by the Magistrate. To avoid prolixity, the cross-examination of PW-3 will be discussed at the appropriate stage.

- 13) The evidence of PW-1, 2 & 3 is augmented by the evidence of Smti. Dasami Keot who testified as PW-4. She stated that the victim X is her niece. The incident took place on 01-08-15. On the evening of the incident, at about 6:30 pm, while she was sitting in the victim's house, the victim came running to her house and told her mother that while she was alone in the accused person's house attending her tuition class, the accused kissed her and took off her panty and then she pushed away the accused person and came home running. She was present in the victim's house when the victim narrated the incident to her mother. The victim's mother Smti. Nirmala Keot went and informed about the incident to her husband. This part of the evidence of Sri Krishna Keot supports the evidence of PW-2 & 3 that when Nirmala was informed about the incident, she went and informed about the incident to her husband in his shop. The victim's father and his elder brother went to the accused person's house and brought him back to their house. This part of the evidence also corroborates the evidence of Sri Krishna Keot that as soon as he heard about the incident about his daughter, he went to the accused person's house and then he and his elder brother brought the accused to their house. PW-4 further testified that several villagers gathered and Sri Krishna Keot took the accused to the police station.
- 14) The evidence of PW-3 & 4 is also corroborated by the evidence of PW-5. Sri Kajal Keot testified as PW-5 that the victim is his niece. The incident took place in the year 2015. On the evening of the incident, at about 6:00 pm, while he was in his shop near his brother Sri Krishna Keot's house, his wife

Dasami Keot hurriedly came to his shop and informed him that while X was in the accused person's house attending her tuition class, he tried to molest her because at that time, the victim was alone in the accused person's house. He immediately closed his shop and informed Rajen Munda about the incident and then he went to the accused person's house. He found the accused person and asked him about the incident and took the accused towards his house. On the way, he met his brother Sri Krishna Keot. Krishna slapped the accused and at that time, several villagers gathered there. So they immediately took the accused to the police station. As he was embarrassed, he did not ask the victim about the incident. The victim X and her parents went to the police station and his brother lodged an ejahar with the police. During investigation, the police seized an underwear belonging to the victim. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature.

- 15) PW-3 Sri Krishna Keot has categorically stated that when he went to the accused person's house, he met his brother with the accused and this part of the evidence is corroborated by his brother's evidence. His brother PW-5 stated that while he was on his way to Krishna's house along with the accused person, he met his brother. There is a minor contradiction regarding the place where Krishna met his brother which can be ignored, because the fact remains the same. Krishna testified that he met his brother in his house with the accused after the incident while his brother Kajal Keot testified that he and the accused met Krishna on the way. All the witnesses PW-3, 4 & 5 stated that Krishna and Kajal Keot came back to the house of Krishna Keot along with the accused. All the witnesses PW-1, 2, 3, 4 & 5 have categorically stated that when Krishna Keot learnt about the incident, he slapped the accused person. This is indeed an open and shut case. The evidence of two DWs could not rebut the evidence of all the prosecution witnesses.
- 16) Smti. Sanjana Kalandi testified as DW-1 that the victim X is known to her. She was invited by the accused to help X with her studies, because she was a recipient of scholarship. The accused was a tutor. On the day of the incident, she was present along with X in the accused person's house. The accused person's mother, his sister-in-law and his two nephews were also present in the house. She was in the accused person's house for about three hours and when the accused asked them to go home, she and the victim went home. She stated that no incident took place.

- 17) The accused had indeed taken a very weak plea and the evidence of DW-1 does not at all inspire confidence. One cannot decipher from the evidence adduced by DW-1 as to what she was referring to. Did she refer to the date of the incident and has she tried to transpire that on the day of the incident, she was present. Then why she did not mention the date. On the contrary, she has stated in her cross-examination that she did not meet X after the incident. If she did not meet X after the incident, the how did she know that the incident took place as X did not mention anything about the incident.
- 18) Smti. Pallabi Kalandi also tried to shield the accused person. She testified as DW-2 that Sanjana is her daughter and she is a student of Class-VII. The accused is a teacher and he was her daughter's tutor. The accused helped her with her scholarship examination and after receiving scholarship, her daughter used to go to the accused person's house from time to time. She further testified that on 01-08-15, Krishna Keot lodged an ejahar against the accused with allegation that his daughter was misbehaved by the accused in the evening. Her daughter went to the accused person's house on the previous evening and she came to know from her daughter that X was present in the accused person's house along with her daughter. She knew that Krishna Keot lodged a false case, because her daughter was present on the previous evening along with X and her daughter did not inform her about any incident in the accused person's house on the previous night.
- 19) This evidence of DW-2 also does not inspire confidence. It is not believable that a student who receives scholarship will go to her tutor's house and help him with his tutorial classes. Pallabi's daughter is a student and not a teacher. It is not fathomable that a tutor will require assistance of an ex-student that too, from such a young girl like Sanjana to help him with his tutorial classes. The evidence of DW-2 is too farfetched and sketchy and does not at all inspire confidence. Her evidence does not rebut the evidence elicited by the prosecution. Both mother and daughter appears to be favourably disposed towards the accused and their statements belie the evidence.
- 20) The core issue could not be nullified. The evidence of the IO also supports the prosecution evidence. Through the cross-examination of the IO, the evidence of the PWs could not be controverted or contradicted. All the witnesses were confronted by the defence counsel, but no contradiction could be elicited by the cross-examination of the IO.

- 21) The IO Sri Tuseswar Baruah testified as PW-7 that on 01-08-15, he was at Borbari Outpost as ASI of Police. On that day, at about 8:00 pm, several villagers from Alubari Line came to the Outpost and on their complaint, the In-Charge made a GDE No. 18 dtd. 01-08-15 and took custody of the person and directed him to investigate the case. The accused person was the person who was brought by the villagers. On the same day, at about 10:15 pm, Krishna Keot lodged an ejahar which was registered as Borbari Outpost GDE No. 20 dtd. 01-08-15 and the same was forwarded to the Officer-in-charge of the Dibrugarh Police Station. The eihar was registered as Dibrugarh PS Case No. 623/15 under Section 4 of the POCSO Act. He embarked upon the investigation, recorded the statements of the witnesses. He seized underwear from the victim. Ext. 3 is the Seizure-List and Ext. 3(2) is his signature. Material Ext. 1 is the underwear of the victim which he seized on 01-08-15. On the following day, he went to the place of occurrence and prepared Sketch-Map. Ext. 4 is the Sketch-Map and Ext. 4(1) is his signature. Thereafter, on the next day, the woman constable recorded the statement of the victim and then she was taken to the AMCH for examination. The victim was forwarded to the Magistrate for recording her statement under Section 164 CrPC. On 02-08-15, he arrested the accused and forwarded him to the Court. After completion of investigation, he submitted the Charge-Sheet against the accused. Ext. 4 is the Charge-Sheet and Ext. 4(1) is his signature.
- 22) The only contradictions elicited from the IO is that Kajal Keot did not state before him that after receiving the information from his wife, he immediately informed Rajen Munda and then he brought the accused person to his own house and on the way, he met his brother Krishna Keot, who gave two tight slaps to the accused person and the villagers assembled. He took the accused person to the police station to protect him.
- 23) In my foregoing discussions, it has already been held that this is a minor contradiction which can be safely ignored. The core issue could not be impeached. There is clinching evidence that the accused taking the opportunity of the victim being alone in his house, kissed on her lips and took off her panty and then kissed her tummy. The victim's mother stated that the accused sought to touch his penis against her private part. Both the victim and her mother testified that when the accused removed the victim's panty, the victim pushed him away. There is nothing to disbelieve this witness.

24) At this stage, it is germane to mention that the learned defence counsel emphasized in his argument that in *Jummi vs. State of Haryana,* [CrLJ 1936 (SC) 914], it was held by the Hon'ble Supreme Court that-

Reliability of evidence of child witness.- A Court to form an opinion from circumstances as to whether the witness is able to understand duty of talking truth and in case of a child witness, Court has to ascertain that the witness might have not been tutored. Evidence of child must be evaluated more carefully and with greater circumspection because a child is susceptible to be conveyed by what near and dear ones told him to do.

25) Reverting to this case, it is held that the child witness in this case is also the victim. Her evidence is corroborated by the evidence of all the other witnesses. No deviation or contradiction could be detected. The evidence of all the witnesses remained unscathed and unimpeached. I would like to rely on the decision of the Hon'ble Gauhati High Court in *Manik Medhi vs. State* of *Assam and another* [2016 (3) GLT 419], wherein it has been held that-

"24. It is a settled position of law that once the statement of the prosecutrix inspires confidence, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court to look for corroboration of her statement. If the substratum of the prosecution case is found to be wholly reliable and the evidence of the victim is found convincing and inspiring, it will not be necessary for the Court to go on looking for corroborating evidence."

26) Reverting back to this case, it has already been held that the evidence of the witnesses could not be impeached. The statement of the victim before the Magistrate is also consistent. Ext. 1 is the statement of the victim recorded by the Magistrate. It is apt to mention at this stage that the witnesses PW-1, 2 & 3 were not cross-examined regarding their previous statements before the IO. Their evidence has not been controverted and contradicted by the cross-examination of the IO. It has already been held in my foregoing discussions that the evidence of the defence witnesses does not inspire confidence.

- Moreover, the evidence elicited by the defence could not project the motive behind foisting a case against the accused. There appears to be no reason assigned by the defence as to why the prosecutrix will foist a case against the accused.
- 27) It is also apt to mention at this stage that no overt act could be attributed to the accused in his attempt to commit rape. PW-1 is the prosecutrix and her evidence is taken into account. She testified that the accused removed her panty, but she did not state that the accused attempted to commit rape on her. Her evidence depicts that the accused kissed her tummy and removed her panty. Besides this, no overt act was described by the victim. But the victim has clearly testified that the accused committed sexual assault. Her evidence does not depict that the accused attempted to commit penetrative sexual assault on her. But her evidence clearly depicts that the accused committed sexual assault on her, without penetration.
- 28) Recapitulating the evidence, it is held that the prosecution failed to prove beyond reasonable doubt that the accused attempted to commit penetrative sexual assault on the victim, but the prosecution could prove beyond reasonable doubt that the accused committed sexual assault on the victim. There is clinching evidence that the accused with sexual intent kissed the victim and removed her panty and kissed the victim on her lips and kissed her tummy. The accused did act with sexual intent which involves physical contact without penetration. The accused is thereby held guilty of offence under Section 8 of the POCSO Act.
- 29) I have heard the accused on the quantum of sentence. He has stated that he is innocent and he has to look after his parents and brothers. He has prayed for acquittal.
- 30) Considering the gravity of the offence and considering the facts and circumstances of this case, I believe that a sentence to imprisonment for 3 (three) years will meet the ends of justice. The offence is of such a grave nature that it should be abhorred by the society and a punishment to imprisonment for 3 (three) years will also act a deterrent. It will also send a message to the public at large. The victim is of an impressionable age and it can be easily anticipated to what extent the offence traumatized her.

#### **SENTENCE:**

31) The accused Sri Kajal Das is convicted under Section 8 of the POCSO Act and

is sentenced to undergo rigorous imprisonment for 3 (three) years and pay a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo rigorous imprisonment for 1 (one) month. The period of detention of the accused during investigation and trial is set of with his custodial sentence.

- 32) This case is also recommended for compensation to the victim. Send a copy of this judgment to the Secretary, DLSA, Dibrugarh for assessment of compensation to the victim.
- 33) The seized items be disposed of as per law.
- 34) Furnish free copies of this judgment to the convict immediately and send a copy to the District Magistrate, Dibrugarh.

Judgment is signed, sealed and delivered in the open Court on the 26<sup>th</sup> day of May, 2017.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

## **APPENDIX**

#### List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Smti. Nirmala Keot;
- 3. PW-3 Sri Krishna Keot;
- 4. PW-4 Smti. Dasami Keot;
- 5. PW-5 Sri Kajal Keot;
- 6. PW-6 Sri Rajen Munda;
- 7. PW-7 Sri Tuseswar Baruah;
- 8. DW-1 Smti. Sanaja Kalandi;
- 9. DW-2 Smti. Pallabi Kalandi.

#### List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.