### IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Sri S. K. Poddar, AJS Present :-

> Special Judge, <u>Sivasagar</u>.

# Spl. (P) Case No. 19 of 2014 U/S 12/17 of POCSO Act. (Arising out of Geleky P.S. Case No.53/14)

#### State of Assam

-Vs-

1. Md. Abu Kasim Ali

2. Mustt. Azima Begum

3. Md. Ismile Ali ...... Accused

## **APPEARANCE:**

For the prosecution Sri A. K. Bora, P. P.

For the accused Md. Jahauddin Ahmed, Advocate

20.01.2015

10.07.15, 17.12.15, 19.02.16, 24.01.17

 

 Date of framing charge
 : 20.01.2015

 Dates of Evidence
 : 10.07.15, 1

 Date of S/D
 : 15.02.2017

Date of Argument 28.03.2017 Date of Judgment 05.04.2017

#### <u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 30.06.2014, the victim 'X' (name withheld) lodged an FIR with O/C, Geleky P.S. alleging, inter alia, that accused Moulona Kasim Ali and his wife Azima Begum always induces her to flee away with the boy staying in their residence and they will help by providing their own vehicle on the said attempt. The said boy also used to tease her with indecent words and sign.
- 2. On receipt of the FIR, Geleky P.S. Case No.53/2014, U/S 12/17 of Spl. (P) Case No. 19 of 2014 Page 1 of 6

POCSO Act, 2012 was registered and investigated into the case. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 12 of POCSO Act, 2012 against accused Md. Ismile Ali, and Section 17 of POCSO Act, 2012 against accused Md. Abu Kasim Ali @ Moulona Kasim Ali and Mustt. Azima Begum.

- On appearance of the accused persons before this court, vide order dated 20.01.2015, my learned predecessor in office has framed the charge U/S 12 of POCSO Act, 2012 against accused Md. Ismile Ali and charge U/S 17 of POCSO Act, 2012 against accused Md. Abu Kasim Ali and Mustt. Azima Begum to which they pleaded not guilty. During trial, prosecution side has examined five witnesses including the M.O. and I.O.
- 4. Upon completion of the prosecution evidence, accused are examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when they are called upon to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Md. Jahanuddin Ahmed, learned defence counsel, and gone through the evidence and documents. I have considered the submission of both the sides.

### POINTS FOR DETERMINATION ARE -

- 6. (I) Whether accused Md. Abu Kasim Ali and Mustt. Azima Begum has abetted the accused Md. Ismile Ali to commit sexual harassment upon the victim 'X'?
  - (II) Whether on 30.06.2014, accused Md. Ismile Ali has committed sexual harassment on the victim 'X'?

#### DECISION AND REASONS THEREOF:

7. P.W.1 the victim X, in her evidence deposed that in the month of June 2014, while she was going to school accused Ismile teased her by saying that on performance of marriage, children born and asked her to marry him.

She has objected the matter to his parents. On this incident, she lodged the FIR (Exbt. 1) Galeky Police Station. Police got her medically examined. She also gave her statement in Court vide Exhibit 2. In her cross-examination she admitted that her residence is near to the accused. At the time of the incident she was reading in class 10. She knew the accused 2 days prior of the incident. While filing the FIR, her uncle has accompanied with her. She admitted that on 29.06.2014, one Hamidullah has lodged an FIR against her parents, Najir Ali, Pori Begum, her brother Sajif Ali, herself and her uncle Bokli Ali for physically assaulting Azima Begum. She has no knowledge if Sohura Begum has lodged an FIR at Galaky Police Station of physically assaulting her mother. She denied that on 28.06.2014, her brother Nasif Rahaman took the accused Ismile Ali to his residence and his parents and his brother insulted Ismile Ali and Azima Begum. She also denied that out of grudge, she has lodge the false FIR.

- 8. P.W. 2 Dr. Sadhan Bora, in his evidence deposed that on 28.07.2014, he has examined the victim X and found that the age of the victim is above 16 years and below 18 years. He proved his report as Exhibit 3. In his cross-examination, he admitted that no lady doctor was present at time of the examination of the victim.
- 9. P.W. 3 Firuja Begum and P.W.4 Mofija Begum in their evidence deposed that they have no knowledge about the incident.
- 10. PW. 5 the I.O. Sri Ashim Borah, in his evidence deposed that on 30.06.2016, he received the FIR from victim X and during investigation, he visited the place of occurrence and prepared the sketch map (Exhibit.4). He recorded the statements of witnesses including the victim, got the victim medically examine and got her statement U/S 164 Cr.P.C and on completion of the investigation submitted charge sheet U/S 12 of POCSO Act against the accused Ismile Ali and charge sheet U/S 17 of POCSO Act against the accused Abdul Kasim and Azima Begum vide Exhibit 5. In his cross he admitted that name of accused Ismile Ali was not mentioned in the FIR. During investigation

he has not collected any age prove documents of the victim. He has not enquired about the Galaky P.S case No 51/2014 and 52/14.

- 11. So far Point No. I, from the evidence on record it appears that though in the FIR specific allegation of instigating her to flee away has been leveled against accused Moulona Kasim Ali and Mustt. Azima Begum, but during evidence, as discussed above, the victim has kept mum against any word of abetment against the accused Kasim Ali and Azima Begum. From the examination-in-chief of the victim it appears that she has brought some allegations against accused Ismile Ali only. No allegation of abating the accused Ismile Ali in causing sexual harassment was deposed.
- So far Point No. II is concerned, the victim in her FIR did not 12. mention the name of the accused. In the FIR victim has alleged regarding teasing her in indecent way. However from the examination-in-chief of the victim it appears that she has specifically stated that accused Ismile teased her by saying that on performance of marriage children born and asked her to marry him. This part of the evidence of the victim gets no corroboration from the evidence of P.W. 3 and P.W. 4. In her evidence she also deposed that she had informed the matter to her parents but prosecution did not examine them as witness to corroborate the fact. On going through the cross examination of the victim it appears that she has specifically admitted that on the previous day, i.e. on 29.06.2014 one Hamidullah lodged an FIR alleging physical assault to Asfina Begum by her parents, brother and by implicating her and others. From the evidence of M.O. (P.W.2) it appears that no mark of injury was detected on her person. P.W.3 though a close relative of the informant/victim, but she deposed that she has no knowledge of any such incident. The I.O. (P.W.5) in his cross examination admitted that he has not inquired regarding Geleky P.S. Case No.51/2014 filed by Hamidullah and Geleky P.S. Case No.52/2014 filed by one Sahera Begum.
- 13. From the above discussion, it appears that the evidence of the Spl. (P) Case No. 19 of 2014 Page 4 of 6

victim regarding teasing her by the accused remains uncorroborated. The allegation also becomes more doubtful in view of the fact that on the previous day of the alleged occurrence, the wife of the accused Ismile has lodged an FIR against the victim and her other family members and this fact shows possibility of filling counter allegation in grudge.

- 14. In view of the above discussion, I am of the opinion that prosecution has failed to bring home the charges against the accused persons beyond all reasonable doubt. The prosecution case appears to be doubtful. As such, I hold that all the three accused persons are entitled for benefit of doubt.
- 15. Considering all above, accused Md. Ismile Ali is acquitted from the charge U/S 12 of POCSO Act, 2012 and accused Md. Abu Kasim Ali and Mustt. Azima Begum are acquitted from the charge U/S 17 of POCSO Act, 2012 on benefit of doubt and set them at liberty forthwith.
- 16. The bail bonds executed by the accused persons and their sureties stand extended for another six months from today.
- 17. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 18. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 19. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand & Seal of this Court on this the, 5<sup>th</sup> day of April, 2017 at Sivasagar.

Special Judge, <u>Sivasagar</u>

### APPENDIX.

### 1. Prosecution witnesses:

- P.W.1 Victim 'X' (Informant)
- P.W.2 Dr. Sadhan Bora (M.O.)
- P.W.3 Miss Firoja Begum P.W.4 Miss Mofija Begum
- P.W.5 Sri Ashim Bora (I.O.)
- 2. <u>Defence witnesses</u> -Nil.
- 3. <u>Court witnesses</u> -Nil.
- 4. Exhibits by prosecution -
  - Exbt.1 FIR
  - Exbt.2 164 Cr.P.C. statement of the victim 'X'
  - Exbt.3 Medical examination report.
  - Exbt.4 Sketch map.
  - Exbt.5 Charge-Sheet

(S.K. Poddar), Special Judge, Sivasagar: