IN THE COURT OF ADDITIONAL SPECIAL JUDGE...... BIJNI.

Present: N.U. Ahmed,
Additional Special Judge,
Bijni.

Special (P) Case No. 22 (B)/2018 U/S 8 of POCSO Act.

THE STATE OF ASSAM

-VS -

Md. Maijuddin MandalAccused person.

APPEARANCE:

Advocate for the prosecution

: Mr. P. Dev Ray, Addl. P.P.

Advocate for the defence

: Mr. N. K. Ghosh, Ld. Advocate.

Date of Charge

: 28-07-2015.

Date of Evidence

: 25-08-17, 25-09-18, 26-11-18, 19-12-18 & 22-01-19.

Date of Argument

: 20-02-19.

Date of Judgment

: 28-02-2019

JUDGMENT

1. The prosecution case, in brief, is that on 07-05-17, informant (name withheld here in after known as victim "A") lodged an FIR with the O. C. Bijni P. S. alleging inter alia that on the same day at about 5 PM, he went to Bijni Railway station for roaming and he met accused Maijuddin Mandal and he took his mobile number. Accused over phone asked him whether he do sex activities and he would take him to Bijni Bidyapith L. P. School for committing sex. Accordingly, accused took him in a room of that school and asked him to remove his long pant. He out of fear removed his long pant and accused tried to push his penis on his carnal and at that time from back side some people came and caught them red handed and handed over to police. Hence, the present case.

2. On receipt of the FIR, O/C Bijni P.S registered the same as Bijni P.S Case No. 57/2017, U/S 8 of the Protection of Children from Sexual Offences, Act, 2012 (here in

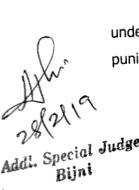
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after known as POCSO Act) and started investigation. During investigation the investigating arrested the accused person, visited the place of occurrence, recorded the statement of witnesses, drew the sketch map of the place of occurrence, recorded the statement of victim u/s 164 Cr. P. C, by a Magistrate, medically examined the victim boy, collected the medical report of the victim boy and after completion of investigation I.O. submitted charge sheet against the accused U/S 8 of the POCSO Act.

- 3. On receipt of the report u/s 173 of the Cr. P. C. cognizance was taken against accused U/S 8 of the POCSO Act and started a Special (P) case against the accused person.
- 4. On production of the accused person, copies of the relevant documents were furnished to the accused person as per provision of section 207 of the Cr. P. C. After hearing both the sides learned Advocate and on perusal of the case diary charge was framed u/s 8 of the POCSO Act against accused and the contents of charge was read over and explained to the accused persons to which he pleaded not guilty and claimed to be tried.
- 5. During trial prosecution side examined as many as nine witnesses including victim. Accused was examined u/s 313 of Cr. P. C and recorded his statement in separate sheets attached to the case record. The defence case was of complete denial and the defence side has not adduced any defence evidence.
- 6. I have heard argument put forwarded by learned advocate of both sides. I have gone through the case record as well as evidence on record.

POINT FOR DETERMINATION

- 7. (i) What was the age of victim "A" at the time of occurrence?
- (ii) Whether accused on 07-05-17 at 5-30 pm at Bijni Biddyapith L. P. School, under Bijni P.S, committed sexual assault on victim "A" and thereby committed an offence punishable u/s 8 of the POCSO Act ?





:DISCUSSION, DECISION AND REASON THEREOF:

- 8. To bring home the charges the prosecution examined nine witnesses including the victim. Let me scrutinize the evidence on record to decide the points.
- 9. Ongoing through the evidence on record it reveals that PW2 Amrendra Ray is the father of the victim boy who has not seen the incident, PW3 Sri Ramit Talukdar and , PW6 Sri Selbstina Narzary had not seen the incident. PW7 is the M. O. and PW9 is the I. O. of this case. In the present case first we should ascertain the age of the victim boy "A".
- 10. PW1 "A" is the victim of the case. PW1 in his evidence stated his age 17 years. PW2 is the father of the victim "A". PW2 in his evidence stated that at the time of occurrence age of victim boy was 17 years. From his evidence it also reveals that on the previous year of the incident victim boy was appeared in Matric but could not able to success and for this reason in the year of the incident he again appeared in Matric examination. From the evidence of PW7 it reveals that the X-ray report not submitted before him and for this reason he could not ascertained the age of the victim boy. PW1 and PW2 in their evidence had not state the date of birth of the victim boy. Statement of the victim boy u/s 164 of the Cr. P. C. recorded on 08th May, 2017 and the victim boy stated his age 17 years. Victim boy deposed in court on 25-08-2017 and stated his age 17 years. So, it appears that after four months of the incident the age of victim boy was remain same. PW1 and PW2 in their evidence lump sum stated the age 17 years. PW1 was appeared two time in Matric examination. Hence, obviously there is document i. e certificate of age of the victim boy. But the prosecution has not produced the school certificate or school first attended admission register to ascertain the age of the victim boy. Though there is document regarding age of the victim boy but the prosecution withheld the documents. Hence, it appears that prosecution withheld the best evidence of the age of victim boy. Moreover, before doctor no X-ray report produced by prosecution. So, an adverse presumption would go against the prosecution that if the prosecution would produce the school certificate it would go against the prosecution. In a criminal proceeding it is the duty of the prosecution to prove its case beyond all reasonable doubt. But from the evidence on record it reveals that prosecution failed to prove that age of the victim boy is below 18 years. To attract the provision of POCSO Act the age is the prime consideration.
- 11. PW1 is the victim of the case. PW1 in his evidence stated that on 07-05 -2017 at about 5-30 PM he went to back side of Bijni Railway Station for roaming and just then he met the

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accused and accused asked him to give his mobile number and also asked him about his schooling and he left the place. After 15 minutes, accused rang him and asked him whether he used to do sex activities and then he replied in negative. He then called him to go the back side of Bijni Bandhab High School to meet him. Accordingly, he went there and met him. Thereafter, accused took him to a room at Bidyapith L. P. School by deceitful manner and forced him to remove his wearing pant. He afraid and he removed his wearing pant and just then, some people came there from back side and they caught them. Thereafter, people gathered there handed over both of them to police. Police asked him in the police station and he lodged the FIR. Police caused his medical examination at Kajalgoan Civil Hospital and his statement was recorded in the court. He proved the FIR as exhibit-1 and exhibit-1(1) is his signature. He also proved his statement u/s 164 of the Cr. P. C. as exhibit-2 and exhibit-2(1) is his signature. During cross-examination he stated that the distance from Bijni Rly Station to Bijni Bandhab School is about 1 km. There is some distance between Bijni Bidyapith and Bijni Bandhab School. Near Bijni Bandhab School and Bijni Bidyapith School there are shop establishment. He has not informed anybody on the road. He while made statement before Magistrate stated that when accused asked him whether he used to do sex activities and then he replied in affirmative and himself called the accused over phone to come and meet him at Bijni Bidyapith and while he and accused were talking with each other, then some people caught them. He went to Bijni Bjdyapith from Bijni Bandhab School on foot.

12. PW2 Amarendra Ray is the father of the victim boy. From his evidence it reveals that he has not seen the incident and his son reported the incident to him. So, he is a reported witness. PW3 Sri Ramit Talukdar in his deposition has deposed that he heard that accused and informed involved with sex activities. PW4 in his deposition has deposed that on the day of occurrence one boy and accused were sitting near the field of Bidyapith L. P. School. After some time the accused and the boy entered into the house of the school and at that time the nearby people took them from inside the school house and informed police and police took the accused and the boy. The accused and boy were coming out from the school house by wearing shirt and pant. During cross-examination he stated he has not seen complete removal of the cloth of accused and the boy and police has not asked him about the incident.

13. PW5 Sri Ratul Bhadra in his deposition deposed that on the day of occurrence while he was talking at Doul Temple near Bidhyapith School then some people entered into the house of the school and took the accused present in the court and one boy. The shirt of the boy was open. During cross-examination he stated that police has not asked him about the incident.

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- 14. PW6 Smt. Selbstina Narzary (Ray) is the mother of the victim boy. From her evidence it reveals that she has not seen the incident and she heard about the incident from her son.
- 15. PW7 Dr. P. K. Barman in his deposition has deposed that on 8-05-2017 he examined the victim boy and found the followings:-
 - (i) There was no external injury.
 - (ii) Dental status- 7/7, 7/7=28

Impression: There is no sign of recent sexual assault. During cross-examination he stated that the radiologist report of examination of victim not produced before him and as such he could not ascertained the age of the victim boy.

- PW8 Sri Biju Mitra in his deposition has deposed that on the day of occurrence 16. while he was playing Cricket at Bidyapith School field then Anubhab Chakladhar and Ratul Bhadra took the accused and one boy from the house of school and handed over them to police. Out of the boy and accused one has no cloth on the body. During cross-examination he stated that police has not asked him about the incident.
- 17. PW9 Smti Gumanti Brahma is the I. O. of this case. Ongoing through her evidence it reveals that she only conducted usual investigation of the case and submitted charge sheet.
- From the evidence on record it reveals that except PW1 victim boy there is no eye 18. witness regarding sexual assault. PW4, PW5 and PW8 saw that the accused and victim boy entered into the house of school and some people caught them and handed over to police. They had not seen any incident of sexual assault. The victim boy only his evidence stated that accused asked him to remove his pant and out of fear he remove his pant. But during his cross-examination he stated that while he and accused were talking in the house of school then some people came from back side and caught them and handed over them to police. The victim boy himself called the accused to the place of occurrence. Though the accused asked him whether he do sex activities, yet the victim boy came to the place of occurrence and met the accused. Victim boy before Magistrate stated that while accused asked him whether he do sex activities he replied in affirmative but during Addl. Special Judges evidence he stated that he replied in negative. The prosecution failed to prove that

the age of victim boy was below 18 years at the time of occurrence. Prosecution claimed that the age of victim boy was 17 years at the time of occurrence. So, it appears that the victim boy has sufficient understanding capacity. There is no consistency in the evidence of PW1. Hence, I find that the evidence of PW1 is not totally safe to rely. Moreover, even we assume that any sexual activities happened between the accused and victim boy then also it was consensus and as such it cannot term as sexual assault.

- 19. What transpires from the above discussion is that the prosecution failed to prove that the age of the victim boy was below 18 years at the time of occurrence and the prosecution failed to prove the offence u/s 8 of the POCSO Act against the accused beyond all reasonable doubt.
- 20. From the discussion made above, I find that the prosecution side miserably failed prove the charges against the accused beyond all reasonable doubt. Hence, accused Md. Maijuddin Mandal is found not guilty u/s 8 of the POCSO Act and he is acquitted from the charge of offence u/s 8 of the POCSO Act and set him free at his liberty forthwith.
- 21. Send a copy of the judgment to the District Magistrate, Chirang as per provision of Section 365 of the Cr. P. C.
- 22. Considering the facts and circumstances of the case I find that this is not a fit case to refer the matter to DLSA, Chirang for victim compensation.
- 23. Bail bonds furnished by the accused persons shall remain in force till next six months from today as per provision of section 437-A of the Cr. P. C.

Given under my hand & seal of this court the 28th day of February, 2019.

Typed by myself

Additional Special Judge,

Bijtini Judge

(N. U. Ahmed)

Additional Special Judge,

Bijni, dudge

APPENDIX

(A) Prosecution witnesses:

PW1- Victim "A"

PW2- Sri Amarendra Ray

PW3- Sri Ramit Talukdar

PW4- Sri Anubabh Chakladhar

PW5- Sri Ratul Bhadra

PW6- Smti Selbstina Narzar (Ray)

PW7- Dr. P. K. Barman

PW8- Sri Biju Mitra

PW9- Smti Gumanti Brahma

(B) Defence witnesses: Nil.

(C) Prosecution exhibits:

Exhibit-1, FIR.

Exhibit-2, Statement of victim u/s 164 of the Cr. P. C.

Exhibit-3, Medical report.

Exhibit-4, Charge sheet.

- (D) Defence witnesses: Nil.
- (E) Defence exhibits: Nil.
- (F) Court Witnesses:Nil.
- (G) Court exhibits: Nil.

Additional Special Judge, Special Judge BijnBijni

