IN THE COURT OF THE DISTRICT & SESSIONS JUDGE CUM SPECIAL JUDGE-2(FTC)(POCSO) :: :: TINSUKIA

District: Tinsukia

Present: Md. A. Hakim,

District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.

POCSO Case No. 28(T)/18 U/s 12 OF POCSO Act

	The State of Assam
	Complainant.
	-Versus -
	Sri Sukdeep Kheruwar @ Lela,
	S/o- Sri Samaru Kheruwa,
	R/o- Hilika T.E line no. 14,
	P.S- Doomdooma
	District- Tinsukia, Assam.
	Accused.
Appearance:	
Sri B.L Agarwal Spl. Public Prosecutor	For the Complainant
Smt. A. Handique Advocate	For the accused.

Date of Argument: **30.01.2019.**Date of Judgment: **30.01.2019.**

J U D G M E N T

- 1. The prosecution case in brief is that on 29.06.18 at about 1 P.M when the informant and other members of the house were not at home, the accused entered the house of the informant and committed sexual harassment upon the 12 years old daughter of the informant by unrobing her.
- 2. Receiving the FIR, Doom-dooma P.S. registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused and forwarded to face the trial.
- **3.** Upon receiving the record and appearance of the accused in this court and upon hearing both sides and considering the materials on record charge u/s 12 of POCSO ACT has been framed, particulars of which on being read over and explained the accused had pleaded not guilty and claimed to be tried.
- **4.** During trial, prosecution examined Six (6) witnesses. The accused is exempted from examination u/s 313 Cr.P.C as no material ingredients of offence is found against the accused.
- **5.** I have heard argument put forth by the ld. Counsel for both the sides as well as gone through the entire materials available on record.

6. POINT FOR DETERMINATION:-

(i) Whether the accused on 29.06.18 at about 1 P.M at Hilikha Bagan line no. 14, under Doomdoom P.S in the district of Tinsukia had committed sexual harassment upon the victim girl and thereby committed an offence punishable U/s. 12 of POCSO ACT or not?

DISCUSSION, DECISION AND REASONS THEREOF:

- 7. P.W.1, the victim girl has deposed that her age is now 15 years. She has not brought any age proof document. She knows the accused Sukhdeep Kherua. He is also known by the name Lela. The incident took place nearly one year back. One day in the afternoon at about 1 P.M after collecting ration from garden store, she entered in her house and the accused followed her inside her house and the accused arabbed her from behind and out of fear she cried. Thereafter her elder brother Bishal came. After half an hour her father also came and out of anger her father lodged the ejahar. The period when the accused was fleeing away, his Chappals were left in his house. He was also produced by the police for her medical check up at Doomdooma FRU. He was also brought to court to record her statement before Magistrate U/s. 164 Cr.P.C. After recording her statement U/s. 164 Cr.P.C she had put her thumb impression.
 - {At this point the witness is declared hostile with the permission of the court.}
- **8.** She denies the suggestion that the accused had lifted her sporting with the intention to do bad act.
- 9. In Cross-examination she has stated that she had good relation with the accused prior to the incident. The accused only shocked her from behind, so out of fear lodged the case. And for that reason an argument took place between her brother and the accused and out of anger a case was lodged.
- 10. P.W.2, Sri Ranglal Karmakar has stated that the victim is his daughter. She is around 12-13 years. She has not brought the documents of her age. She knows the accused Sukhdeep Kherua @ Lela. He resides near their house. The

incident took place nearly four or five months back. On the date of incident she returned home at about 1:30 P.M and saw that his daughter was crying. His daughter told him that the accused had entered his house and he embraced her from behind and for that she was crying and hearing her cries his son Bishal entered the house and seeing Bishal the accused fled away. And while the accused was fleeing away he left his chappal in their house. Hearing this he lodged the ejahar at Doomdooma police station. Ext. 1 Ejahar, Ext. 1(1) is his signature. He has forgotten the name of the scribe. Police had seized the Chappal. Ext. 2 is the seizure-list, Ext. 2(1) is his signature. He has stated in his ejahar that the accused had embraced his daughter with bad intention. This fact he wrote out of anger he lodged the ejahar and before the police he has stated so out of anger.

- 11. In Cross-examination she has stated that he does not remember the date of birth of his daughter. As argument took place between his son and the accused, he out of anger lodged the case. The accused only shocked his daughter from behind but did not embraced her.
- is his younger sister. He knows the accused Sukhdeep Kherua @ Lela. The incident took place nearly six months back. On that day he returned home after 12 noon after viewing cinema and as he was about to enter his house he heard cries of his sister. When he entered his house he saw that accused ran away seeing him and while he was fleeing away he left the Chappal in his house. On enquiry from his sister he came to know that the accused had caught hold of her. Police seized the Chappal.
- 13. In Cross-examination he has stated that the accused only shocked his sister from behind. Argument took place

between them and out of anger his father lodged this case.

29.06.18 she was working as Sr. Medical & Health Officerat Doomdooma FRU. That day at about 1:30 AM she examined the victim girl in connection with Doomdooma P.S case no. 167/18. She was brought and identified by WHG, Banti Khatowal and her father Ranglal Karmakar. At the time of examination she gave the history as – at around 12 noon on 28.06.18 someone named Sibish Orang came to her house and tried to undress her. At that moment, the victim's brother came in the house and the accused ran away.

On examination she found as follows:

Physical examination: 1) Whether oriental in space & time---Yes

Pulse, BP, Temperature, Respiratory rate all normal.

Clothing - fresh.

No injury on her person including her private parts.

Hymen - intact.

No any bleeding, tear or discharge found per vagina or cervix.

Her Radiological examination was done to ascertain her age and as per the report her age was found to be 15 to 17 years.

Ext. 3 is the Medical Report, Ext. 3(1) is her signature.

Ext. 4 is the Radiological Report with X-ray plates.

- **15.** In Cross-examination she has stated that it is not the conclusive proof of age of the victim. The age given in her report is only on the basis of Radiological report.
- **16.** P.W.5, Sri Sanjoy Boraik has deposed that apart from doing business, he is Vice President of AATSA.(Sub Branch).

He knows the victim as well as the accused. The Incident took place nearly 6 months back. One day in the afternoon at about 1:30 P.M the VDP President, Sri Dilip Nayak alongwith Ranglal Karmakar(the father of the victim) came to him and told him that the accused had tried to commit rape upon the victim and for that reason it was necessary to discuss the matter. He thereafter immediately went to the house of Ranglal, found the victim in the house, enquired from her and she told him that when she was returning from home taking ration, the accused was hiding near the entry gate of her house and when she entered the house the accused caught hold of the victim and immediately thereafter her brother came and the accused fled away. On being asked the accused denied his involvement and during such interrogation there had been a scuffle between and the accused and the father of the victim. So meeting could not be held.

- 17. In Cross-examination he has stated that Police did not interrogate him. As such, he has not given statement before the police as given in his examination in chief. He denies the suggestion that he has deposed falsely.
- 18. P.W.6, Sri Dilip Nayak has deposed that apart from doing business, he is President of VDP. He knows the victim as well as the accused. The Incident took place nearly 6 months back. At about 4 P.M the father of the victim came to his Borhapjan Shop and informed him that the accused had came to his house and tried to commit rape upon his daughter. Then he took Sri Ranglal Karmakar to Sanjoy Boraik and therefrom they went to the house of the informant. They met the victim girl. On being asked the victim girl told that the accused had disrobed her sporting and tried to outrage her modesty. Thereafter he met the accused who denied his involvement.

- 19. In Cross-examination he has stated that Police did not interrogate him. As such, he has not given statement before the police as given in his examination in chief. He denies the suggestion that he has deposed falsely.
- **20.** With regard to the point for determination Ld. counsel for the defence has pointed out that prosecution has failed to prove the case beyond reasonable doubt. The victim herself has not alleged against the accused person and other PW's have also not alleged anything against the accused person. Hence the accused person should be acquitted and set at liberty.
- **21.** In reply Id. Addl.P.P has admitted that the victim and the other witnesses have failed to implicate the accused.
- 22. Upon hearing both sides, I have gone through the material evidence on record and found that the material witness victim i.e. PW 1 has deposed that the accused grabbed her from behind when she returned home after collecting ration and out of fear she cried and in anger her father had lodged FIR at the P.S. During cross examination she states that "she had good relation with the accused prior to the incident. The accused only shocked her from behind, so out of fear lodged the case. And for that reason an argument took place between her brother and the accused and out of anger a case was lodged". The eye witness PW 2, have also not alleged anything against the accused. The medical evidence of PW 3 has also disclosed nothing about the sexual harassment. The PW 5 & 6 are not the eye witnesses and their statement is not supported by the victim and the family members of the victim hence not reliable. The prosecution has failed to prove that the accused had committed the offence of sexual harassment.

- 23. Hence, considering the evidence on record, I am of the considered opinion that the Prosecution has failed to prove the case against the accused U/s. 12 of POCSO Act beyond all reasonable doubts. Hence, the accused person namely 1) Sri Sukdeep Kheruwar @ Lela is acquitted on benefit of doubt and set at liberty.
- **24.** The Prosecution is directed to dispose of the seized material in accordance with law.
- **25.** Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.
- **26.** The case is disposed of herewith.
- **27.** Given under her hand and seal of this court on this the 30th day of January, 2019.

Dictated & corrected by me:

(A. Hakim), District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia. (A. Hakim),
District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

Transcribed by:

P.D Phukan, (Steno)

ANNEXURE

PROSECUTION WITNESSES:

P.W.1, Victim,

P.W.2, Sri Ranglal Karmakar,

PW.3 Sri Bishal Karmakar,

PW.4, Dr. Ashma Z.H Ghaznabi,

PW.5, Sri Sanjoy Boraik,

PW.6 Sri Dilip Nayak.

PROSECUTION DOCUMENTS:

Ext. 1, is the Ejahar,

Ext. 2 is the Seizure-list,

Ext. 3 is the Medical Report,

Ext. 4, is the Radiological Report.

(A. Hakim), District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.