## **DISTRICT: KAMRUP (M)**

## IN THE COURT OF THE SPECIAL JUDGE, KAMRUP (M) GUWAHATI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

## Sessions Case No. 166 of 2017

U/S 8 of the POCSO Act, 2012

Corresponding to Sonapur P.S. Case No. 166/2017

State of Assam .....Complainant

Versus

Shri Praneswar Bhuyan ...Accused

Charge framed on : 22.08.2017

Evidence recorded on : 22.02.2018, 02.04.2018, 04.05.2018,

 $02.06.2018,\ 02.08.2018,\ 06.08.2018,$ 

26.11.2018, 26.03.2019 & 29.04.2019.

Statements recorded on: 14.12.2018

Arguments heard on: 13.05.2019

Judgment delivered on: 27.05.2019

### Advocates who appeared in this case are:

Shri Girin Das, Addl. P.P., for the Prosecution.

Shri Rakesh Dubey, Advocate for the accused.

#### <u>JUDGEMENT</u>

- This case was registered on 29.05.2017, at Sonapur Police Station, under Section 8 of the Prevention of Sexual Children from Sexual Offences Act, 2012 (in short "the FIR"), based on a First Information Report (in short "the POCSO Act"), filed by one Smt. Binoy Boro, against the accused Praneswar Bhuyan.
- 2. The case of the prosecution, as stated in the F.I.R, is that at the relevant time, the thirteen years' old minor daughter of the informant, (hereinafter referred to as "the victim girl"), was studying in Class-VI of the Kamalajari M.E. School. A few days before the alleged incident, the accused Praneswar Bhuyan, who was a teacher of the said school, used to sexually assault the victim girl. On 25.05.2017, the accused Praneswar Bhuyan touched the private parts of the victim girl and mentally tortured her. Failing to bear the sexual harassment at the hands of the accused Praneswar Bhuyan, the victim girl told about the same to the informant. The victim girl also told the informant that the accused Praneswar Bhuyan, had sexually assaulted five/six of her classmates. Therefore, on 29.05.2017, they handed over the accused Praneswar Bhuyan to the Sonapur Police and the informant lodged an F.I.R. of the incident with the Sonapur Police Station.
- **3.** Based on the FIR, the Officer-in-charge of the Sonapur Police Station registered the Case No. 147/2017, under Section 8 of the POCSO Act and entrusted the Woman S.I. of police Smt. Manju Gogoi to investigate the case. Accordingly, Woman S.I. of police Smt. Manju Gogoi investigated the case.
- **4.** During the course of investigation, the Investigating Officer visited the place of occurrence and recorded the statements of several witnesses. The Investigating Officer also sent the victim girl to the GMCH for medical examination and collected her Medical examination Report. The

Investigating Officer also got the statement of the victim girl and another recorded by the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."). After completion of the investigation, finding sufficient evidentiary material against the accused Praneswar Bhuyan, the Investigating Officer submitted chargesheet for an offence under Section 8 of the POCSO Act against him in this court, as this court has been designated as the Special Court for trial of cases under the POCSO Act. Hence this case.

- 5. During trial, my learned predecessor framed charge under Section 8 of the POCSO Act against the accused Praneswar Bhuyan. When the contents of the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.
- 6. The prosecution, in order to prove its case, examined thirteen witnesses. In his examination under section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the case is the result of a conspiracy hatched by the then Principal of the Kamalajari School. He also examined himself and four other witnesses to prove the same.
- **7.** The point for determination in this case is:-

Whether on 25.05.2017, at Kamalajari M.E. School, under Sonaur Police Station, the accused Praneswar Bhuyan sexually assaulted the victim girl, who at the relevant time was aged about 13 years and thereby, committed an offence punishable under Section 8 of the POCSO Act.

If so, what punishment does he deserves?

#### **DECISION AND REASONS THEREOF**

**8.** I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments

advanced by the learned counsels for both the sides, give my decision on the above point as follows:-

- Phase victim girl, (PW-1) has deposed that the occurrence took place while she was studying in Class-VI at the Kamalajari High School. The school is a co-educational school and in their class, there were both boys and girls students. The other victim girls were also studying with her. The accused was the Mathematics teacher of their class. In the class-room, the accused used to disturb her by touching her body. He used to press her arms during class time. She reported the matter to her mother and her mother informed the police. Her statement was recorded by the Magistrate. Ext-1 is her said statement and Ext-1(1) is her signature therein. In the Ext-1 statement, the victim girl has categorically stated that, the accused used to hold her arms and not any other parts. Holding the hands of the victim girl cannot be held to an offence under Section 8 of the POCSO Act. The definition of the sexual assault given in Section 7 of the POCSO Act reads as follows:-
- **"7 Sexual assault —** Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- **10.** Section 7 of the POCSO Act defines the offence of sexual assault. It states that a person is said to commit sexual assault if he with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration.
- **11.** Section 87 of the POCSO Act is the penal provision for sexual assault.

- **12.** In view of the above testimony of the victim girl, in the instant case, the accused Praneswar Bhuyan cannot be held guilty of committing the offence under Section 8 of the POCSO Act.
- 13. The other victim girl, (the PW-2), whose name is not mentioned in the charge framed by my learned predecessor, has also deposed that on the day of the alleged occurrence, the accused touched and held her arms and also touched her back. She requested the accused not to do so and thereafter, reported the matter to her mother. Her statement was recorded by Magistrate. Ext-2 is her said statement and Ext-2(1) and 2(2) are her signatures therein. But, as per the definition of the sexual assault, as stated above, touching and holding the arms and touching the back of the victim girl does not fall under the sexual assault as defined under Section 7 of the POCSO Act.
- **14.** PW-3 Smt. Binoy Boro, the mother of the victim girl is not an eye witness of the alleged occurrence. Therefore, based on her testimony, the accused cannot be held guilty of committing the alleged offence.
- **15.** PW-4 Smt. Anjali Boro, the mother of the other victim girl is also not an eye witness of the alleged incident and hence, based on her testimony also, the accused cannot be held guilty of committing the alleged offence.
- 16. PW-5 Dulu Prasad Saikia, a teacher of the Kamaljari High School has deposed that the alleged occurrence took place on 29.05.2017. On that day, after attending the 4<sup>th</sup> period, when he went out, he saw two/three women and a few men in the room of the Principal. The Principal claimed and told him that the guardians of some students leveled allegations regarding indecent behavior towards the students by the accused. He requested the Principal to call a meeting with the President of the Managing Committee of the School and others. The Principal told him that a meeting cannot be called in such a short time. In the mean time, a huge crowd gathered there and the police also arrived. The media

personnel also arrived there. Thereafter, the accused was dragged away and assaulted by the crowd in presence of the police. Thereafter, the police took him away. He did not enquire about the correctness of the allegation.

- **17.** Therefore, the PW-5 has not supported the prosecution case as he has not deposed that the accused had sexually assaulted the victim girls on 25.05.2017.
- **18.** PW-6 Bimala Rahang, an Assistant Teacher of the Kamalajari School has deposed that she knows nothing about the alleged occurrence. She also did not hear anything about the occurrence. Thus, the PW-6 also has not supported the prosecution case.
- **19.** PW-7 Monjica Boro, the next door neighbor of the victim girl, is also not an eye witness of the alleged incident and hence, based on her testimony also, the accused cannot be held guilty of committing the alleged offence.
- **20.** PW-8 Naba Kanta Boro, another neighbor of the victim girl is also not an eye witness of the alleged incident and hence, based on his testimony also, the accused cannot be held guilty of committing the alleged offence.
- 21. PW-9 Ratneswar Ronghang, advisor of the Karbi Students Union has deposed that on 29.05.2017, while he was sitting in the office of the Karbi Students Union, the President of the Boro Student Union, namely Ajit Khaklari, requested him over phone to go to Kamalajari M.E. School as some untoward incident had occurred there. He then went to the Kamalajari M.E. School and found the ABSU leaders there. They went to the office of the Head Master of the school and discussed about the incident. The victim girls were also called and in their presence, the victim girls gave their statements to the Head Master regarding sexual assault by the accused. They were crying at the time of narrating the incident. As

the situation became tense, he informed the police and immediately, the police came and took away the accused. The PW-9 did not depose anything about the alleged incident of sexual assault. Therefore, based on his testimony also, the accused cannot be held guilty of committing the alleged offence.

- 22. PW-10 Ranu Deka, has deposed that on 29.05.2017, she was working as the Head Master of the Kamalajari High School. The Kamalajari M.E. School is also situated inside the campus of the Kamalajari High School. On the relevant day, the Planning Officer came to their school from the office of the Inspector of Schools to discuss about the amalgamation of both the schools. While the Inspector of Schools was inspecting the campus, they saw some women of village Loflong Kholabari. At around 01.00 P.M., they saw a huge gathering inside the school campus. Many young boys came there. She saw the police and media persons. She saw some young boys forcing the accused to kneel down inside the campus in presence of the police. She asked the police why they were not taking any step. She heard that the accused had sexually assaulted the girls. Next day, she organized a meeting inside the school campus, but no girl reported anything about the teacher in her presence. The accused Praneswar Bhuyan used to go to the school in time and left the school in time. She could not understand when the incident of sexual assault had taken place.
- 23. Thus, the PW-10 has completely nullified the prosecution case. In fact, in view of the above testimony of the PW-10, the accused cannot be held guilty of committing sexual assault on any student of the school, as being the Head Master of the Kamalajari High School, the PW-10 organized a meeting in the campus of the school and though the girls of the schools attended the meeting, none reported to her anything against the accused. Therefore, the accused Praneswar Bhuyan cannot be held guilty of committing the alleged offence.

- 24. In the cross-examination, she has stated that she knows the accused Praneswar Bhuyan since 2005. She never received any complaint against him. The accused Praneswar Bhuyan had dispute with the Head Master of the M.E. School.
- **25.** PW-11 Raju Bharali is also not an eye witness of the alleged incident. Therefore, based on his testimony also, the accused cannot be held guilty of committing the alleged offence.
- **26.** PW-12 Manju Gogoi, the Investigating Officer of the case is merely a formal witness as she received the case for investigation on 29.05.2017, whereas the alleged incident occurred on 25.05.2017.
- **27.** PW-13 Bhaskar Jyoti Thakuria, a Home guard of Sonapur Police Station has produced the G.D. Entry No. 870, dated 29.05.2017 and hence, he is also merely a formal witness of the case.
- **28.** Let us now discuss the rebuttal evidence.
- 29. DW-5 Praneswar Bhuyan, the accused, has deposed that on the day of the alleged incident, that is on 25.05.2017, he was present in the school and attended the classes. The victim girl was absent on that day. On 29.05.2017, at around 12.15 P.M., some women police personnel came to the office of the Principal and discussed something with him. Thereafter, at around 01.10 P.M., some youths and media persons came to the teacher's common room and dragged him to the field and assaulted him. Thereafter, the police took him to the 30-beded hospital at Khetri and after medical examination, took him to the Khetri Police Station. He was detained at the Khetri Police Station till 10.30 P.M. Thereafter, he was again taken to the 30-beded hospital at Khetri and from there, he was taken to the Sonapur Police Station. Under a conspiracy hatched by the then Head Master Sunil Ramchiary and some other teaches of the school, he has been falsely implicated in this case. He never sexually assaulted the victim girls. On the day of the alleged occurrence, the victim girl was

not present in the school. Earlier, the Head Master Sunil Ramchiary had misbehaved with some leady teachers of the school at which he objected and therefore, the Head Master framed him in this case. At the instance of the Head Master Sunil Ramchiary, the students' union of the school also acted against him.

- **30.** In the cross-examination, he has stated that on 25.05.2017, he was present in the school. On that day, one of the victim girls was not present in the school, but the other victim girl was present. He definitely cannot say whether the other victim girl was present in the school on that day or not. On 29.05.2017 he was arrested and on the next day, a meeting was held in the school. But he cannot say for what purpose the said meeting was called.
- **31.** DW-2 Ranu Deka, the Head Master of Kamalajari High School has deposed that she has brought the Attendance Register of Class-VI of the Kamalajari M.E. School of the year 2017. According to the Attendance Register, on 25.05.2017, the student having Roll No. 4 (the said student is the victim girl), was absent. The other victim girl having Roll No. 21, was first shown as absent but, overwriting the "A" (for Absent"), "P" (for present) was written against her name.
- **32.** Therefore, the Head Master of the Kamalajari High School has supported the contention of the accused that on the day of the alleged occurrence, the victim girl was absent and the other victim girl was also absent as overwriting the absent, present was written later on. Therefore, the contention of the accused that he has been famed by the then Head Master of the school is believable.
- **33.** Further, as can be seen from the discussion made earlier, the PW-10 Ranu Deka has also corroborated the accused that the then Head Master had falsely implicated him in this case.

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- **34.** Further, the prosecution case is also unbelievable as the accused has alleged to have committed the alleged offence inside a class room. It is simply unbelievable that a teacher will sexually assault some students inside the class-room in presence of other students of the said class. This raises serious doubt about the truthfulness of the prosecution case and hence, the accused must be entitled to get the benefit of the doubt.
- **35.** In view of the testimonies of the prosecution and defence witnesses discussed above, there is no necessity of discussing the testimonies of the remaining defence witnesses.
- **36.** In view of the above, the accused Praneswar Bhuyan cannot be held guilty of committing the alleged offence beyond all reasonable doubt. The point is decided accordingly.

#### ORDER

- **37.** In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has failed to bring home the charge under Section 8 of the POCSO Act against the accused Praneswar Bhuyan beyond all reasonable doubt. Hence, I acquit him giving him the benefit of the doubt. His bail bond stands cancelled. He is set at liberty forthwith.
- **38.** Signed, sealed and delivered in the open Court on this the 27<sup>th</sup> day of May, 2019, in Guwahati.

(Shri A. Chakravarty)
Special Judge, Kamrup (M), Guwahati

Dictated & corrected by me

(Shri A. Chakravarty )
Special Judge, Kamrup (M), Guwahati

## **APPENDIX**

### **A. Prosecution Witnesses:**

- 1. PW-1 Urmila Boro
- 2. PW-2 Mitali Boro
- 3. PW-3 Binoy Boro
- 4. PW-4 Anjali Boro
- 5. PW-5 Dulu Prasad Saikia
- 6. PW-6 Bimala Rahang
- 7. PW-7 Monica Boro
- 8. PW-8 Naba Kanta Boro
- 9. PW-9 Ratneshwar Ronghang
- 10. PW-10 Ranu Deka
- 11. PW-11 Raju Bharali
- 12. PW-12 Manju Gogoi
- 13. PW-13 Bhaskar Jyoti Thakuria,

### **B. Prosecution Exhibits:**

- 1. Ext.1 Statement of Urmila Boro
- 2. Ext.2 Statement of Mitali Boro
- 3. Ext.3 FIR
- 4. Ext.4 Printed copy of the FIR
- 5. Ext.5 Sketch map
- 6. Ext.6 Charge sheet
- 7. Ext.7 GDE Book, containing GDE No.01 to 951

### **C. Defence Witnesses:**

1. DW-1 Bali Gogoi Bhuyan

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- 2. DW-2 Ranu Deka
- 3. DW-3 Amulya Bhuyan
- 4. DW-4 Bhawani Prasad Upadhay
- 5. DW-5 Praneswar Bhuyan

(A. Chakravarty)
Special Judge, Kamrup (M), Guwahati