IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

SESSIONS CASE NO. 17/17

(Under Section u/s 8 of the POCSO Act 2012)

Present: S.P. Moitra,

Sessions Judge

Kamrup(M), Guwahati

State of Assam -Vs -Sri Manoj Kr. Sah

.....Accused Person

Appearance for the Parties:

Advocate for the State : Sri H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Mitali Bhuyan, R. Gohain Learned Defence

Counsels

Date of recording evidence: 02.08.2017, 08.09.2017

Date of Argument : 18.01.2018

Date of Judgment :29.01.2018 (Judgment delivered on

12.02.2018 as the accused remained absent on

the due date)

J U D G M E N T

1. Brief facts of the case of the prosecution, as revealed in course of trial, are that on 14.07.2017, at about 3:30 p.m., when the minor daughter of the informant (name withheld) went to fetch water at Gandhibasti near the railway line, the accused person touched the breast of the daughter of

the informant and also tried to drag her to a stationery train boggie. It is stated that when his daughter did not return for long, the informant went to the waterline and recovered his daughter there. It is also alleged that the accused person fled away from the place of occurrence.

- 2. On the basis of the said F.I.R, Chandmari P.S Case No. 383/14 was registered u/s 8 of the Protection of Children from Sexual Offence Act,2012 (herein after referred to as "POCSO Act") and was taken up for investigation. In course of investigation, I/O visited the place of occurrence and also recorded the statement of the witnesses. Police recorded the statement of the informant u/s 161 of the Cr.P.C. The statement of the victim was also recorded u/s 164 of the Cr.P.C before the Learned SDJM (II), Kamrup (M), Guwahati. The accused person was also arrested and he was sent to judicial custody. After completion of investigation, the I/O submitted charge sheet against the accused person u/s 8 of the POCSO Act.
- 3. Cognizance of the offence was taken under the aforesaid section of law. The accused person who was on bail entered appearance before this Court and he was allowed to remain on previous bail. The copies of the relevant documents were furnished to the accused in compliance to the provision of Section 207 of the Cr.P.C.
- **4.** On consideration of charge, charge u/s 8 of the POCSO Act was framed against the accused person. Charge was read over and explained to the accused to which he pleaded not guilty and stood to face trial.

- 5. To bring home the charge, prosecution examined, as many as, 4 witnesses on its behalf and also exhibited 4 documents. The defence plea was of complete denial of any guilt, as appears from the trend of cross-examination, as well as, from the statement of the accused, recorded u/s 313 of the Cr.P.C.
- **6.** I heard the argument advanced by the Learned Counsel for the parties.

7. <u>POINTS FOR DETERMINATION</u>

i. Whether on 14.07.2014, at about 3:30 p.m., at Railway Gate, Gandhibasti, under Chandmari P.S, Guwahati, the accused person committed sexual assault on the person of a minor girl?

DECISION AND REASON THEREOF

- **8.** I have gone carefully through the entire evidence on record and the materials placed before me. For the sake of convenience and brevity, the evidence on both the points are taken up for discussion together.
- **9.** PW.1 is the alleged victim and her testimony reveals that the incident took place 3 years (from the date of her evidence). She testified that on the day of incident at about 2 p.m., she went to the water line to fetch water and there accused also came to fetch water. She further testified that a quarrel took place between the accused and her and when she came back home crying, her father filed a complaint against the

accused in Chandmari P.S. She further testified that she came to the Court before but not to this Court. She further added that her statement was recorded before the Court. She proved Ext.1 as her statement recorded u/s 164 of the Cr.P.C.

During cross examination, the witness admitted that she did not remember what she had stated before the Magistrate. She further added that she was tutored when her statement recorded before the Magistrate. She further testified that accused did not touch her during quarrel that took place between her and the accused.

10. PW.2 Noor Islam who is the father of the victim testified that incident took place about 3 years back (from date of his evidence). He stated that on the day of incident, when his daughter went to the water line to fetch water, accused also went to the water line to fetch water. He further testified that he heard from the nearby people that accused touched his daughter and thereafter he lodged F.I.R lodged against the accused on being guided by the nearby people.

During cross examination, the witness stated that he does not know the content of the F.I.R. He further stated that he cannot remember who told him about the incident. He added that his daughter did not tell him anything about the incident. He further added that he had not seen the incident.

- **11.** PW.3 Wahidur Rahman testified that he was known to the daughter of the informant and he knows nothing about the incident.
- **12.** PW.4 Nancy H. Vaiphei is the Police Officer who conducted investigation of the case. She stated that on 14.07.2014, she was posted at

Chandmari P.S as Attached Officer and on that day, O/C Chandmari P.S received an F.I.R from Noor Islam and registered Chandmari P.S Case No.383/14 u/s 8 of the POCSO Act. She proved Ext.2 as the F.I.R and Ext.2(1) as the signature of the O/C Chandmari P.S which she knew. She proved Ext.3 as the printed form of F.I.R in which she was instructed to investigate the case and Ext.3(1) as the signature of O/C Utpal Chandra Roy which she knew. Her testimony further reveals that she found Noor Islam at the police station and recorded his statement. She further added that Noor Islam came with the victim and finding the victim at the police station, she also recorded the statement of the victim. She testified that as it was night, she did not visit the place of occurrence. She added that on the next day, at about 10:00 p.m., she went to the place of occurrence and prepared sketch map of the place of occurrence. Her testimony further reveals that the place of occurrence was at the railway line at Gandhibasti under Chandmari P.S and it was near a dock. She also testified that she recorded the statement of other witnesses and find that it was case of touching the body of the victim and accordingly she did not sent the victim for medical examination. She further testified that she collected the statement recorded by the Magistrate in the Court. She added that after 6 days of occurrence i.e. on 20.07.2014 she could apprehend the accused person. She further added that after the accused was interrogated, he was forwarded to judicial custody and after completion of investigation, she submitted charge sheet against the accused u/s 8 of the POCSO Act. She proved Ext.4 as the charge sheet and Ext.4(1) as her signature.

During cross examination, the witness admitted that she recorded the statement of the victim at the police station and she added that at that time she was in uniform. She further admitted that as the victim herself appeared at the police station for filing the case, she had no other option but to examine her. He denied the suggestion of the defence that she did not investigate the case properly and mechanically submitted charge sheet against the accused person. She admitted that the incident started with a quarrel regarding collection of water. She further denied the suggestion of the defence that the accused person had no intention to outrage the modesty of the girl and there was a mere fighting.

- 13. In view of the discussion made above and evidence on record, I find that nothing was disclosed by either the victim or the informant regarding any sexual assault by the accused person. It is evident from the testimonies of both the witnesses that there was merely a quarrel in between the alleged victim and the accused person regarding fetching of water. It is also testified by her that accused even did not touch her during the quarrel. PW.2 i.e. the father of the victim and the informant in this case also corroborated the testimony of the victim and specifically added that he lodged the F.I.R on being guided by others. He also stated that he even does not the contents of the F.I.R.
- **14.** Thus, on a close scrutiny of the evidence of them, I find that the prosecution has miserably failed to establish the guilt of the accused u/s 8 of the POCSO Act.
- **15.** In result, accused Manoj Kr. Sah is held not guilty of offence punishable u/s 8 of the POCSO Act 2012 and accordingly he is acquitted and set at liberty forthwith. Bail bond, furnished on his behalf, will remain in force for the next 6 months.

16. Signed, sealed and delivered in the open court on this 12th day of February, 2018 at Guwahati.

(S.P. Moitra)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)Sessions Judge,
Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Ext-1: Statement of the victim recorded u/s 164 Cr.P.C.

Ext-2: F.I.R

Ext-3: Printed form of F.I.R

Ext-4: Charge Sheet

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1: Abiran Khatun

PW-2: Noor Islam

PW-3: Wahidur Rahman

PW-4: Nacy H. Vaiphei

(F) Defense Witnesses: Nil

(G) Court Witnesses: Nil.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati