DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE, SIVASAGAR:::::::

Ref.:- Spl. (P) Case No. 32 of 2015

(Arising out of Haluwating P.S.Case No.197/2015)

U/S 8 of POCSO Act.

Present :- Sri S. Khound. Special Judge, <u>Sivasagar.</u>

The State of Assam : Prosecution

-Vs -

Sri Chandan Bhumij : Accused

APPEARANCE:

For the prosecution/State of Assam : Sri A. K. Bora, P.P.,

Sivasagar.

For the accused : Sri Bidyut Gogoi, Advocate,

Sivasagar.

Dates of depositions : 20.05.2016, 15.07.2016, 04.10.2016

Date of argument : 14.12.2016

Date of Judgment : 23.12.2016

JUDGMENT

- 1. The accused Sri Chandan Bhumij, S/O Sri Durga Bhumij, resident of Boruah Tea Estate, Bhumij Basti under Haluwating Police Station in the District of Sivasagar, here in this case has been put to face the trial to answer the charge U/S 8 of POCSO Act, 2012.
- 2. The fact as disclosed in the First Information Report (in short FIR) is that on 16.10.2015 complainant Smti Sopna Tanti, W/O Sri Suresh Tanti of Boruah Tea Estate, Bhumij Basti under Haluwating P.S. lodged an Ejahar, before the O/C of Haluwating Polic Station alleging, inter alia, that on 16.10.2015, at about 11 a.m. accused Chandan Bhumij, S/O Sri Durga Bhumij who is a resident of the same Bhumij Basti sexually assaulted her eight years old daughter Chumki Tanti in her house by taking the advantage of absence of other family members in the house at the relevant time. It is further alleged that accused attempted to commit rape on the victim by laying her

Contd...page—2

Page—2

on the ground by slapping and also strangled her. However victim somehow rescued herself from the clutches of the accused by running to a nearby house and thereafter accused left the scene of occurrence. Hence the complainant lodged Ejahar and prayed for taking necessary action against the accused.

- 3. On the basis of the said Ejahar police registered Haluwating P. S. Case No.197/2015 U/S 8 of POCSO Act, and investigated into the case. Accordingly Investigating Officer visited the place of occurrence, and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, got the victim medically examined and also forwarded the victim to the court for recording her statement U/S 164 Cr.P.C. On completion of investigation submitted Charge-Sheet against the accused under Section 8 of POCSO Act, 2012.
- 4. The accused Chandan Bhumij produced before this court for trial after furnishing copy to the accused person as the case is exclusively triable by the court of Special Judge.
- 5. On appearance of the accused person before this court, and after hearing both the sides formally framed the charge against the accused under Section 8 of POCSO Act, 2012. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To bring home the charge, prosecution side has examined as many as six witnesses including the Medical Officer Dr. Hemendra Kr. Gogoi as P.W.1 and victim Smti Chumki Tanti as P.W.2. Defence cross-examined the said P.Ws but declined to cross examine the P.W.1. Defence adduced no evidence. Defence plea is of total denial. The statement of the accused recorded U/S-313 of the Cr. P.C.
- 7. I have heard Mr. Bidyut Gogoi, learned counsel for the accused and Mr. A. K. Bora, learned Public Prosecutor for the State.

8. <u>THE POINT FOR DETERMINATION IS -</u>

Whether the accused on 16.10.2015, at about 11 a.m. committed sexual assault on the victim Smti Chumki Tanti while she was alone in her house situated at Boruah Tea Estate, Bhumij Line under Haluwating P. S. in the District of Sivasagar and thereby committed an offence punishable under Section 8 of POCSO Act, 2012 as alleged?

Page—3

DECISION AND REASONS THEREOF

- 9. To arrive at a judicial decision, let the evidence on record be appreciated.
- 10. P.W.1 is the Medical Officer Doctor Dr. Herndra Kr. Gogoi who deposed that on 16.10.2015 he was as Senior Medical & Health Officer at Amguri CHC. On that day, on police requisition, he examined Miss Chumki Tanti in connection with Haluwating P.S. Case No.197/2015 U/S 8 of POCSO Act. The victim was accompanied and identified by UBC 378 Rajib Dutta, and on examination no any external injury is seen on the person of the victim Chumki Tanti. Ext.1 is the medical report and Ext.1(1) is the signature of P.W.1.
- P.W.2 is the victim Smti Chumki Tanti who deposed that accused is known to her 11. who is her neighbour. Occurrence took place about 6/7 months back (from the date of deposition), and on the day of occurrence when she was alone in her house at that time accused came there and asked her to bring the key of their house to open the lock of the house of the accused. Accordingly P.W.2 gave the key of their house and then accused went away. P.W.2 further deposed that after a short time accused again came to the house of P.W.2. and by that time accused touched her breast, and also gave a slap by gagging her mouth and thereafter accused fled away from the scene of occurrence. Then P.W.2 immediately went to the house of her elder sister Priyanka Tanti which is situated nearby the house of the P.W.2 and disclosed the occurrence before her. It is further deposed by P.W.2 that in the evening when her parents returned home from the working place then she had disclosed the occurrence before her mother. Later on her mother lodged Ejahar and police brought the P.W.2 to the Doctor for medical examination. She also gave her statement in the court which is Ext.2 where Ext.2(1), Ext.2(2) & Ext.2(3) are her signatures. In cross examination P.W.2 denied defence suggestion that she did not give the key of their house to the accused and when accused tried to snatch away the key from P.W.2 forcibly then scuffle took place between them, and in the midst of scuffle victim (P.W.2) herself fell down on the ground. She further denied defence suggestion that accused did not touch her breast by gagging her mouth, and prior to the occurrence accused off and on came to the house of the P.W.2. She further denied defence suggestion that she had given her statement in the court as tutored by her inmates. P.W.2 deposed that her school ends at 2 p.m. P.W.2 further denied defence suggestion that she has deposed false evidence in the court.

- 12. P.W.3 is Smti Swapna Tanti who is the mother of the victim deposed that accused is her neighbour and victim Chumki Tanti is her daughter. About six months back (from the date of deposition) one day, i. e. on the day of occurrence P.W.3 and her husband went to the garden for duty and at that time her victim daughter Chumki was alone in the house. On that day, in the noon, while she was returning home from the working place then Priyanka Tanti reported the occurrence and then she informed the occurrence to the V.D.P. and as per advice of the V.D.P. P.W.3 lodged Ejahar which is Ext.3 where Ext.3(1) is her signature. P.W.3 further deposed that Ejahar was written by one Surya Borah. Later on her victim daughter Chumki reported the occurrence. In cross-examination P.W.3 deposed that she did not see the occurrence. P.W.3 denied defence suggestion that at the time of occurrence scuffle took place between the accused and the victim Chumki Tanti since the victim refused to hand over the key to the accused, and in the midst of the scuffle victim sustained injury by herself falling on the ground. P.W.3 further deposed that there are several houses of other people near the house of the P.W.3. P.W.3 denied defence suggestion that she has lodged false Ejahar against the accused.
- 13. P.W.4 is Sri Dilip Tanti who deposed that he knows the accused as well as the victim Chumki Tanti. About 8/9 months back (from the date of deposition), one day Swapna Tanti, the mother of the victim Chumki Tani came to the house of P.W.4 and reported him that accused wanted to touch the body of the victim and except this P.W.4 knows nothing regarding the occurrence. In cross examination P.W.4 deposed that he did not see the occurrence.
- 14. P.W.5 is Smti Priyanka Tanti who deposed that accused is known to her, and victim Chumki Tanti is her grand-father's daughter. Occurrence took place about seven months back (from the date of deposition) and on the day of occurrence, while she was present in her house at that time victim Chumki Tanti came to her on running from the house of the victim situated in the same court-yard and reported her that accused pressed the breast of the victim, and also gave a slap by gagging her mouth and thereafter accused left the scene of occurrence. At that time P.W.5 saw the accused coming out from the house of the victim Chumki Tanti. Police came and interrogated P.W.5. In cross examination P.W.5 deposed that she did not see the occurrence. P.W.5 denied defence suggestion that victim Chumki reported her that accused did not touch her breast. At the time of occurrence only scuffle took place between the accused and the victim Chumki Tanti regarding a key. P.W.5 further denied defence suggestion that victim Chumki sustained injury by herself falling on the ground since the scuffle took place between the accused and the victim. She denied defence suggestion that she has deposed false evidence in the court.

- 15. P.W.6 is the Investigating Officer Sri Biren Dutta who deposed that on 16.10.2015 when he was on duty in Haluwating P.S. as Second Officer, on that day the then O/C Sri Simanta Borah received an Ejahar from Smti Swapna Tanti and accordingly registered a case being Haluwating P.S. Case No.197/2015 U/S 8 of POCSO Act, 2012 and entrusted P.W.6 with the investigation. Ext.3 is the said Ejahar where Ext.3(2) is the signature of O/C Simanta Borah which is known to P.W.6. During investigation, P.W.6 visited the place of occurrence, recorded the statement of the witnesses and also prepared the Sketch map. Ext.4 is the Sketch map where Ext.4 (1) is his signature. The victim was medically examined and thereafter collected the medical report of the victim. On completion of investigation P.W.6 submitted Charge-Sheet against the accused Chandan Bhumij U/S 8 of POCSO Act. Ext.5 is the Charge-Sheet where Ext.5(1) is the signature of P.W.6. In cross examination P.W.6 deposed that on the day of occurrence accused wanted a key from the victim Chumki Tanti. P.W.6 further deposed that the house of the accused and the victim are adjacent.
- 16. Above are the evidence led by prosecution in support of its case.
- 17. To prove the charge U/S 8 of POCSO Act against the accused, the prosecution is to prove that on the day of occurrence the accused committed sexual assault on the victim Smti Rinamoni Mech who is below 12 years of age. Sexual assault is defined in Section 7 of POCSO Act as follows -

"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."

In the instant case it is seen from the evidence on record that there is no eye witness of the alleged occurrence. P.W.2 Chumki Tanti deposed that on the day of occurrence accused once came and asked for the key of his house and taking the key he went away. After a while accused again came and touched her breast and not only that he gave her a slap by gagging her mouth. She also deposed that she reported the matter to P.W.5 Priyanka Tanti, after the occurrence she came on running and reported that accused touched her breast, and gave a slap by gagging her mouth. P.W.5 also deposed that at that time she saw the accused

going out of the house of the victim. P.W.5 is related elder sister of the victim. According to P.W.3 who is the mother of the victim there are many houses situated near the house of the victim. Defence took the plea that at the time of occurrence accused asked the victim to give the key of his house but the victim refused, as a result while trying to take the key from the victim pulling and pushing took place and the victim herself fell down and sustained injury as a result she deposed false evidence implicating the accused with the alleged occurrence.

- 19. Section 30 of POCSO Act, 2012 defines that Special Court shall presume the existence of culpable mental state on the part of the accused only when it believes it to exist beyond reasonable doubt and not merely when its existence is established merely by a preponderance of probability. From the evidence of the victim it is seen that according to her the accused came to her house for twice. First time he came and took his key from the victim and went away. Thereafter the accused after a while again came and touched her breast, gave a slap by gagging her mouth. In my view had the accused any motive, or intention to commit the offence of sexual assault as alleged on the victim then he could have done it at the first instance when he took his key from the victim as deposed by her. If that part of evidence is believed even then the prosecution could not establish the culpable state of mind of the accused to commit the alleged offence since a person who touches the breast of a girl with sexual intent can not be expected to give a slap to the victim in that circumstances. It is also not understood why the victim did not raise hue and cry to cause alarm to the neighbouring people. Though P.W.5 deposed that she after being reported the occurrence by the victim saw the accused going out of the house of the victim but in my view that part of evidence is not believable since after committing alleged offence normally accused would have tried to flee from the scene of occurrence, and he is not expected to remain in the house of the accused since the occurrence being reported to P.W.5 by the victim.
- 20. After careful scrutiny of the facts and circumstances of the case in its entirety I am of the view that possibility of the defence plea that at the time of alleged occurrence victim refused to hand over the key to the accused and as a result a scuffle took place during which the victim fell down and sustained injury, can not be ruled out.

21. In the backdrop of foregoing discussions and keeping in mind the facts and circumstances of the case, I am of the view that prosecution has failed to prove its case U/S 8 of POCSO Act, 2012 against the accused beyond all reasonable doubts. Accordingly I hold the accused not guilty and he is acquitted of the charge of offence U/S 8 of POCSO Act, 2012 and set at liberty forthwith.

Judgment prepared, pronounced and delivered in the open court under my hand & Seal of this court on this the, 23rd day of December, 2016 at Sivasagar.

Dictated & corrected by me.

(S. Khound),
Sessions Judge,
Sivasagar:

(S. Khound), Sessions Judge, Sivasagar: