IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

<u>Spl. (P) Case No. 14 of 2017 U/S 10 of POCSO Act, 2012.</u> (Arising out of Bihubor P.S. Case No. 13/2017)

State of Assam

-Vs-

Sri Bipul Mili Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D. M. Neog, Advocate

(Legal Aid Counsel)

Date of framing Charge : 08.01.2018

Dates of Evidence : 19.03.2018, 11.06.2018, 08.08.2018,

20.09.2018.

Date of S/D : 29.10.2018
Date of Argument : 07.01.2019
Date of Judgment : 21.01.2019
Judgment delivered on : 28.01.2019

JUDGMENT

1. Prosecution case in brief, is that on 27.03.2017, informant Smt. Karuna Pradhan lodged an FIR with O/C, Bihubor P.S. alleging, inter alia, that since last several days, accused Bipul Mili, apart from giving indecent proposal, also attempted to commit rape on victim 'NK' (name withheld) aged about 10 years, but somehow victim saved herself. It is further alleged that by not satisfying on this, on 22.03.2017, at about 3 PM, while the daughter of the informant victim 'MP' was playing at the residence of the accused, accused Bipul Mili attempted to commit misdeed with her and on her objection, she was assaulted and driven out. Lastly on 26.03.2017, while the victim 'NK' went to

residence of a neighbouring person, accused restrained her on her way and physically assaulted her by dragging the victim over stone and on raising objection by the informant, accused Bipul Mili, his wife and daughters physically assaulted the informant.

- 2. On this FIR, Bihubor P.S. Case No. 13/2017 u/s 342/323/354 IPC read with Section 12 of POCSO Act, 2012 was registered and investigated. During investigation, victim 'MP' and 'NK' were medically examined and recorded their statement in the court u/s 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet against the accused u/s 342/323/354 IPC read with Section 12 of POCSO Act, 2012.
- 3. Upon taking cognizance on the Charge-Sheet and after furnishing copy to the accused, vide order dated 08.01.2018, charge u/s 10 of POCSO Act, 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined eight witnesses including the victims and I.O.
- 4. On completion of the prosecution evidence, accused was examined u/s 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. D,M. Neog, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 6. (i) What was the age of the victims 'NK' and 'MP' on the date of incident?
 - (ii) Whether accused Bipul Mili has sexually assaulted victims 'NK' and "MP' with sexual intent?

DECISION AND REASONS THEREOF

7. PW-1 Smt. Karuna Pradhan, mother of victim MP in her evidence deposed that on 22.03.2017, from her daughter MP, she learnt that while she went to the house of accused for drinking water, and while she coming out from the said house, accused Bipul Mili grabbed her and touched her breast. On this after

rebuking the accused, came out therefrom and informed the matter to her at her residence. On knowing this, she informed the matter to Bubli Pradhan and they charged the accused. Prior to this incident, accused also tried to sexually assault victim NK. On 26.03.2017 the accused physically assaulted NK for disclosing the incident with her to local public. On that day, while she was at her place of work, she saw that after chasing victim NK, accused Bipul, his wife and his daughter physically assaulting NK by holding her hair and dragged her. On raising objection, they also dragged her by holding her hair near to their courtyard and assaulted her physically. She got injury on her face etc. On this incident, she lodged the FIR. Exbt. 1 is the FIR. At the time of incident, her daughter MP was aged about 11 years and NK was aged about 10 years. In her cross examination, PW-1 denied that on making nuisance by her husband at the residence of the accused, there was an incident of quarrel between accused and her husband. PW-1 also denied that when the accused pushed out her husband from his house, she also went to his house and make quarrel with him. Accused has 4 daughter and wife. One of the daughters of accused is of the same age of her daughter. Her daughter and daughter of accused used to play together. NK also plays with them. PW-1 also denied that after the incident with her husband, when accused asked her daughter and NK not to come to his house for play with his daughter, they informed her about the matter. She also denied that, as accused restrained her daughter and NK to go to his house and also for the incident of quarrel with her husband, she filed this false case. PW-1 denied that while giving statement to police or in the FIR, she has not stated about getting injury on her face etc. She was treated for the injuries sustained by her. Police took her to Santak Hospital for treatment. Parents of NK are alive. For the incident dated 22.03.2017, she did not submit the FIR on same day. Her residence is at a distance of about 11/2 KM from Bihubar PS. She denied that she lodged a false FIR and tutored her daughter to give false statement.

8. PW-2 victim MP, in her evidence deposed that her present age is 13 years and she is reading in class VII at Bihubar High School. On 22.03.2017 at about 2 PM, she went to the house of accused for drinking water, and while she was coming out from the said house, accused Bipul Mili, who was standing in his

courtyard, suddenly entered his house and grabbed her and touched her breast. After this, immediately she came back to her residence and informed the matter to her mother and aunt Bubli Pradhan. On knowing this, they went to the house of accused and charged him. Accused did not come out of his house and on next day he flew away. After 2-3 days of above incident, when NK and she went to the river side, on way NK told her that several days back, while she returned after taking bath, accused raised her skirt. This conversation was heard by Anu Mili, the younger daughter of the accused and informed the matter to her father Bipul. On knowing this, accused Bipul physically assaulted NK for disclosing the incident with her to others. On that day, while her mother restrained the accused Bipul, on this daughter of Bipul assaulted her mother. Accused Bipul assaulted her father by giving a slap. She saw this incident from her residence. On this incident, her mother filed an FIR. Police also took her to doctor for medical check up and to court for recording my statement. Exbt. 2 is her statement given in court. In her cross examination, PW-2 deposed that Anu Mili, daughter of accused is of her age. They used to play together. NK also plays with them. At the time of alleged incident with her, she along with NK were playing at the residence of accused with Anu Mili. In her cross, PW-2 denied that prior to the alleged incident with her, there was an incident of quarrel between accused and her parents. PW-2 also denied that on this, accused restrained her and NK in coming to his house for play with his daughter. PW-2 also denied that she deposed falsely regarding grabbing by the accused, and touching her breast. PW-2 also denied that while giving statement in court or to police, she has not stated that "after 2-3 days of above incident, when NK and she went to the river side, on way NK told her that several days back, while she returned after taking bath, accused raised her skirt and that accused and his daughter assaulted her parents." PW-2 further denied that she has deposed falsely as tutored by her parents.

9. PW-3 victim NK in her evidence deposed that her present age is 11 years and she is reading in class VII at Siloni M E School. About a year back, while she was playing with the similarly aged girls in the court yard of the accused, once he touched her chest and pinched. On the next day of above incident, while she was cleaning her court yard, accused came there and raised her skirt. However she

did not report the matter to anybody. After few days of incidents with her, one day she saw a guarrel between the mother of MP and accused Bipul and came to know that accused has touched the breast of MP. After 2-3 days of above incident, when MP and she went to the river side for taking bath, on way she told MP that few days back, accused has also misbehaved her like MP. This matter was heard by Anu Mili, the younger daughter of the accused and informed the matter to her father Bipul. On knowing this, accused Bipul started rebuking her. On this, she kept herself hidden at the house of one Nepali family, wherefrom the 2 daughters of accused namely Tuni and Moina, wife of the accused namely Kali and one other relative dragged her by holding her hair and after bringing her to the courtyard of accused, they physically assaulted her for disclosing the incident with her to others. She got pain on her hair, hand and legs. On this while MP's mother restrained them, Bipul hold her by holding her hand, and they four assaulted MP's Mother. On seeing this when the father of MP came there and charged them, they also assaulted father of MP. Accused Bipul also assaulted father of MP. Police interrogated her. Police also took her to doctor for medical check up and to court for recording statement. Exbt. 3 is his statement given in court. In her crossexamination, PW-3 deposed that prior to reporting the matter to MP, she did not inform the matter to others. On the first incident with her, she was playing with several girls of her age. They are Rani, Sunu, Papu, Puku etc. She reside at her residence with her parents and with 2 brothers. There are contiguous houses near to their house. They also knew about the incident with her. PW-3 denied the suggestion that while giving statement in court or to police, she has not stated that "On knowing this, accused Bipul started rebuking her. On this she kept herself hidden at the house of one Nepali family wherefrom the 2 daughters of accused namely Tuni and Moina, wife of the accused namely Kali and one other relative dragged her by holding her hair and after bring her to the court yard of accused, they physically assaulted her for disclosing the incident with her to others. She got pain on her hair, hand and legs. On this while MP's mother restrained them, Bipul hold her by holding her hand, and they four assaulted MP's Mother. On seeing this when the father of MP came there and charged them, they also assaulted father of MP. Accused Bipul also assaulted father of MP." PW-3 also denied that prior to the

alleged incident with her, there was an incident of quarrel between accused and parents of MP and on this accused restrained her and MP not to come to his house for play with his daughter. She also denied that she deposed falsely regarding grabbing her by the accused, and touching her breast. She denied that, she has deposed falsely as tutored by MP's parents.

- 10. PW-4 Sri Suresh Pradhan, father of the victim MP, in his evidence deposed that about 1-2 days prior of filling of the case, while he was returning home, he saw that accused Bipul in assaulting NK. On protest by him and his wife, Bipul physically assaulted him and his wife. On this, his wife told him that they should go to Police Station. She also told him that while MP and NK entered the house of accused for drinking water, accused touched their breast and body. He also came to know that when NK has reported the matter of touching her breast, accused has physically assaulted her. At the time of incident his daughter was a student of class VII and she was aged about 12 years. In his cross examination, PW-4 deposed that he came to know about the incident with MP and NK only after the incident of physical assault on him. Due to assault on him and his wife, when they went to police station, the incident with NK and MP was also informed. Bipul live with his wife and 2 daughters. His residence is just near to his residence. Several villagers including neighbours witnessed the incident of assault on him by accused, but he forgot their name. In his cross examination, PW-4 denied that as he entered into the house of accused under intoxication of liquor, accused restrained him and an altercation took place. He also denied that accused never assaulted NK. PW-4 denied that for the altercations with him, with false allegation of touching MP and NK, they lodged this false case. They filed the FIR on the day of assault on him.
- 11. PW-5 Smt Ahila Karmakar, mother of the victim NK, in her evidence deposed that NK is presently aged about 12 years. NK and MP used to play together. Accused Bipul Mili did not misbehaved her daughter NK. This case was filed by Suresh alleging assault by Bipul. Several peoples gathered there. She has not heard about any incident by accused with MP. Suresh took her daughter to police station without her permission. On being declared hostile and during cross-examination by prosecution, PW-5 denied the suggestion that on 27.03.2017 while

giving statement to the I/O of this case, she has stated that "Since last few days her neighbour Bipul Mili on the pretex of showing love to her daughter NK, used to touch her body, kisses on her cheeks and also touched on her other parts of the body and gave indecent proposal. Bipul Mili used to give intimidation while found her alone and also gave indecent proposals." PW-5 also denied that Exbt. 4 is her statement given to police and Exbt. In her cross examination by defence, PW-5 deposed that NK never complained her about any misbehave with her by accused Bipul Mili. She has no knowledge if NK gave any statement in Court or before police implicating the accused. She might give such statement, on being tutored by Suresh Pradhan as he took her to Police station without her permission. At the time of incident, she was suffering from ailment and hence could not know that her daughter was taken to police station, else she would not have allowed her to go there. She never gave any statement before police regarding misbehaviour by accused to her daughter NK. There was a quarrel between Suresh Pradhan and accused at the courtyard of accused and on this, Suresh filed this case with false allegation of misbehaviour with NK.

12. PW-6 Smt. Sukumani Sarma in her evidence deposed that on the date of incident, at about 5 PM, while she was at her residence, Karuna Pradhan, mother of MP came to her and informed that Bipul Mili and his wife were physically assaulting NK. On this, she went to the house of accused. On going there, she saw that accused Bipul is assaulting Suresh Pradhan, father of MP and wife of Bipul is assaulting Karuna Pradhan. She also saw Bipul in assaulting MP and NK by pulling them. While filling the case, at police station, NK informed her that prior to the incident of assault, when NK went to the house of Bipul, accused pinched her Buttuck. On this MP also reported that while she went to the house of accused for drinking water, accused touched her breast. Police came to their village. In her cross examination, PW-6 deposed that on her arrival at the house, she saw that scuffle was going on between Bipul and Suresh Pradhan. She has not heard about the incident of touching buttock and breast prior to going to police station of filling case by Karuna Pradhan. On the same day of quarrel between Bipul and Suresh, Karuna lodged the FIR. She went to Bihubar PS on the next day as requested by Suresh and Karuna and came to know about the incident of NK and MP. She also came to know about the above incident during scuffle with Suresh. Incident of scuffle took place at the court yard of Bipul. She cannot say why the scuffle is initiated. Residence of Bipul is within residential area of tea tribe peoples.

PW-7 Smt. Boogly Pradhan in her evidence deposed that on the date 13. of incident on one Wednesday, at about 3 PM, while she was cleaning her court yard, MP came to her and reported that while she went to the house of accused for playing with her friends, accused Bipul Mili touched her breast. On knowing this, she informed the matter to Karuna Pradhan and they both went to the house of accused. On seeing them, Bipul kept himself hidden in his house. On this, they informed the incident to Maina Mili, eldest daughter of Bipul Mili but she requested to inform the matter to her mother who was not in the house. After this, at about 7 PM they called wife and mother of accused to the house of Karuna and informed them about the incident. They requested them not to divulge the incident to male members of the family. On the next day, Bipul left his house and returned only on Saturday. On Sunday, while MP and NK went to river side to take bath, MP reported the matter to NK. On this, NK told her that accused also pinched her buttock. This matter was heard by mother-in-law of Bipul and reported the matter to Bipul. On this Bipul, his wife, his mother-in-law and three daughters chased NK and after holding, physically assaulted her. Thereafter while Suresh Pradhan returned from work, and objected in assaulting NK, Bipul assaulted Suresh Pradhan. On knowing this Karuna Pradhan came to house of accused and objected in assaulting her husband. On this daughter of Bipul assaulted Karuna Pradhan. She has seen the incident of assaults on NK, Suresh and Karuna by Bipul and his daughter. On this incident, Karuna Pradhan lodged the case. She also went to police station. In her cross examination, PW-7 deposed that Suresh Pradhan is the elder brother of her husband. PW-7 denied the suggestion made by defence that while giving statement to police she has not stated that "On the date of incident on one Wednesday, at about 3 PM, while she was cleaning her court yard, MP came to her and reported that while she went to the house of accused for playing with her friends, accused Bipul Mili touched her breast. On knowing this, she informed the matter to Karuna Pradhan and they both went to the house of accused. On seeing them Bipul kept himself hidden in his house. On this, they informed the incident to

Maina Mili, eldest daughter of Bipul Mili but she requested to inform the matter to her mother who was not in the house. After this, at about 7 PM they called wife and mother of accused to the house of Karuna and informed them about the incident. They requested them not to divulge the incident to male members of the family. On Thursday Bipul left his house and returned only on Saturday. On Sunday, while MP and NK went to river side to take bath, MP reported the matter to NK. On this, NK told her that accused also pinched her buttock. This matter was heard by mother-in-law of Bipul and reported the matter to Bipul. On this Bipul, his wife, his mother-in-law and three daughters chased NK and after holding, physically assaulted her. Thereafter while Suresh Pradhan returned from work, and objected in assaulting NK, Bipul assaulted Suresh Pradhan. On knowing this Karuna Pradhan, came to house of accused and objected in assaulting her husband. On this daughter of Bipul assaulted Karuna Pradhan. I have seen the incident of assaults on NK, Suresh and Karuna by Bipul and his daughter." PW-7 also denied that before police she has stated that "On knowing about touching their body by accused Bipul, and that on asking Bipul, he kept mum; that on 26.03.2017 infront of the house of Bipul, she has seen some altercation and scuffle amongst MP, NK and Karuna in one side and Bipul in another side." PW-7 also denied that MP being her niece, she has deposed a false story today.

14. PW-8 ASI Ashok Ganguly, the IO of this Case in his evidence deposed that during investigation of Bihubar PS case No. 13/2017 he went to the place of occurrence and drawn a sketch map of the PO. Exbt. 5 is the said sketch map. During investigation, he apprehended the FIR named accused Sri Bipul Mili. On 28.03.2017, victims MP and NK were sent for medical examination and to Court for recording their statement u/s 164 Cr.P.C. He has collected the medical report and statement given by victim in court. Exbt. 6 is the medical report of victim NK. Exbt. 7 is the medical report of MP. In Exbt. 6 and 7 age of both the victims were mentioned as below 14 years. On completion of investigation, SI Bhaskar Deogharia, has submitted charge sheet against accused Bipul Mili u/s 342/323/354 IPC r/w section 12 of POCSO Act. Exbt. 8 is the charge sheet. He confirmed that witness Ahita Karmakar in her statement, stated that "Since last few days her neighbour Bipul Mili on the pretex of showing love to her daughter NK, used to

touch her body, kisses on her cheeks and also touched on her other parts of the body and gave indecent proposal. Bipul Mili used to give intimidation while found her alone and also gave indecent proposals." He proved the said statement as Exbt. 4. In his cross examination, PW-8 deposed that the informant did not allege any incident of physical assault with her or other family members except the victim. Witness Karuna Pradhan in her statement before him did not state that regarding getting injury on her face etc. Victim MP in her statement before him did not state that "after 2-3 days of above incident, when NK and she went to the river side, on way NK told her that several days back, while she returned after taking bath, accused raised her skirt and that accused and his daughter assaulted her parents." Victim NK in her statement before him did not stated that "On knowing this, accused Bipul started rebuking her; that on this she kept herself hidden at the house of one Nepali family wherefrom the 2 daughters of accused namely Tuni and Moina, wife of the accused namely Kali and one other relative dragged her by holding her hair and after bring her to the court yard of accused, they physically assaulted her for disclosing the incident with her to others; that she got pain on her hair, hand and legs; that on this while MP's mother restrained them, Bipul hold her by holding her hand, and they four assaulted MP's Mother; that on seeing this when the father of MP came there and charged them, they also assaulted father of MP. Accused Bipul also assaulted father of MP." PW-8 denied that Ahita Karmakar did not give him Exbt. 4 statements and he has concocted the same. PW 8 confirmed that witness Bugly Pradhan in her statement before him did not state that "On the date of incident on one Wednesday, at about 3 PM, while she was cleaning her court yard, MP came to her and reported that while she went to the house of accused for playing with her friends, accused Bipul Mili touched her breast. On knowing this, she informed the matter to Karuna Pradhan and they both went to the house of accused. On seeing them Bipul kept himself hidden in his house. On this, they informed the incident to Maina Mili, eldest daughter of Bipul Mili but she requested to inform the matter to her mother who was not in the house. After this, at about 7 PM they call wife and mother of accused to the house of Karuna and informed them about the incident. They requested them not to divulge the incident to male members of the family. On Thursday Bipul left his house and

returned only on Saturday. On Sunday, while MP and NK went to river side to take bath, MP reported the matter to NK. On this, NK told her that accused also pinched her buttock. This matter was heard by mother-in-law of Bipul and reported the matter to Bipul. On this Bipul, his wife, his mother-in-law and three daughters chased NK and after holding him, physically assaulted her. Thereafter while Suresh Pradhan returned from work, and objected in assaulting NK, Bipul assaulted Suresh Pradhan. On knowing this Karuna Pradhan, came to house of accused and objected in assaulting her husband. On this daughter of Bipul assaulted Karuna Pradhan. She has seen the incident of assaults on NK, Suresh and Karuna by Bipul and his daughter." Witness Bugly Pradhan in her statement before him stated that "On knowing about touching their body by accused Bipul, and that on asking Bipul, he kept mum; that on 26.03.2017 infront of the house of Bipul, she has seen some altercation and scuffle amongst MP, NK and Karuna in one side and Bipul in another side." PW-8 denied that he has not investigated the case properly.

- 15. Point No. I: So far age of the victim is concerned, P.W. 1 the informant in her evidence claimed that at the time of incident victim 'MP' was aged about 11 years and victim 'NK' was aged about 10 years. However victim 'MP' while adducing evidence after about a year of the incident claimed her age as 13 years and victim 'NK' claimed her age as 11 years on the date of her evidence. PW 5, the mother of the victim 'NK' also claimed the age of her daughter as 12 years. PW 8, the I.O. of this case while proving the medical reports of victim 'NK' and 'MP' as Exbt.6 and 7 stated that age of the victims were below 14 years on the date of examination. No document on age of the victims were collected by the I.O. or produced by the parents of the victims. During trial, the age as stated by the victims remains unrebutted and unchallenged. Considering the evidence of PW 4 and PW 5 and the fact that at the time of incident both the victims were aged above 12 years but below 14 years of age.
- 16. <u>Point No. II:</u> So far allegation of sexual assault on the victims is concerned, in the course of argument hearing, learned Special P.P. has submitted that the fact of teasing by accused Bipul Mili to both the victims were found proved and the prima facie case is made out for the offence u/s 10 of Spl. (P) Case No. 14/2017

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POCSO Act. On the other hand, learned Legal Aid Counsel in his detail argument by referring to the evidence of the witnesses has submitted that the incident of sexual assault as narrated is totally concocted. Learned counsel further argued that the real fact is that due to making nuisance by Suresh Pradhan, husband of the informant at the residence of the accused, he restrained the victims to come to his house for playing with similarly aged daughter of the accused and get them out from his house. On this incident, feeling aggrieve, the informant has concocted this story and lodged the FIR with much delay. Learned counsel further argued that mother of the victim 'NK' (PW 5) in her evidence has deposed the clear picture showing the falsehood of the concocted case against the accused. It is also pointed out that the witnesses have exaggerated their version from their previous statement given before police and contradicted on material points and hence the prosecution witnesses cannot be relied upon. Learned Advocate also argued that defence has successfully rebutted the presumption available u/s 29 of POCSO Act and thus without the help of Section 29 of POCSO Act, prosecution case has totally failed on the standard of proving the case beyond reasonable doubt. I have considered the submission of both the sides and gone through the evidence on record.

17. On careful reading of the evidence, it appears that several incidents have been brought together in this case. The first incident is of 22.03.2017, when the victim 'MP' was allegedly sexually assaulted by the accused while she went to the house of accused for drinking water, accused grabbed the victim and touched her breast. On the same day the incident was informed to the informant and aunt Bubli Pradhan and on knowing this, they charged the accused. The second incident is of 26.03.2017 when the victim 'NK' was physically assaulted by the accused for disclosing the incident of teasing by accused with her and on that day, the informant was also allegedly physically assaulted. The third incident as disclosed by the victim regarding teasing of victim 'NK' while she was coming from river side after taking bath, accused touched her buttock. Admitted the FIR was lodged on 27.03.2017.

18. So far the incident dated 22.03.2017 is concerned, it is the case of the prosecution that on that day victim 'MP' went to the house of accused for drinking water and while she was coming out, accused grabbed her and touched her breast. On this, after rebuking the accused the victim returned home and informed the matter to her mother and aunt Bubli Pradhan. PW 1 has supported this part of evidence. PW 2, the victim has also supported this part of evidence. PW 3 victim 'NK' is a hearsay witness so far the incident dated 22.03.2017 is concerned. However PW 4, father of the victim 'MP' has contradicted and simply stated that while victim 'NK' was assaulted by the accused on 26.03.2017, on raising protest, accused assaulted him and his wife and he came to know from his wife that while the victim 'MP' and victim 'NK' entered the house of the accused for drinking water, accused touched their breast and body. PW 4 is totally silent regarding incident of 22.03.2017; rather contradicted. PW 5, mother of the victim 'NK' was declared hostile and she is silent regarding any incident; rather she stated that there was no incident of any misbehaviour with her daughter by the accused and the informant on false pretext took her daughter to Police Station and got the case filed. PW 6 is a witness to the incident of 26.03.2017. PW 7 is a hearsay witness so far the incident dated 22.03.2017 is concerned. From the evidence of PW 7, it appears that after the incident with victim 'MP', victim reported the matter to her and she has reported the matter to Karuna Pradhan. But from the evidence of Karuna Pradhan, it appears that after the incident, victim 'MP' came to her house and reported the matter to her and on this she informed the matter to PW 7. Thus PW 1 and PW 7 are contradicting each other as to who came to know first about the incident and who informed the matter to others. PW 2 victim 'MP' however simply stated that she informed the matter to both PW 6 and PW 7. One thing is common that on knowing the incident, they charged the accused by going to his house. PW 2 victim 'MP' further deposed that while her mother and aunt Bubli Pradhan (PW 7) went to the house of accused, he did not come out of his house. But PW 1 is totally silent on this part of evidence. During their cross examination PW 1, PW 2 and PW 7 has admitted that one of the daughter of the accused is of the same age of victim 'MP' and they used to play together. PW 1 admitted that for the incident dated 22.03.2017 she did not submit any FIR. On going through the Exbt. 6 and 7, the medical report of the victim 'NK' and "MP', it appears that no any injury marks were found on the victims. From the medical reports, it also appears that breast of the victims were underdeveloped.

19. Now coming on the incident of 26.03.2017, it appears that prosecution case is that while PW 3 victim 'NK' was going to the river side, accused, his wife and his other family members chased her and physically assaulted her and also dragged her by holding her hair and on raising objection, PW 1 the informant was also assaulted. PW 2 victim 'MP' also disclosed that after the incident of 22.03.2017, when she along with victim 'NK' went to take bath, victim 'NK' told her that while returning after taking bath, accused raised her skirt and this matter was heard by the daughter of accused and informed the matter to her father. For disclosing the said incident, victim 'NK' was physically assaulted by the accused. PW 3 the victim 'NK' has supported the evidence of PW 2 and the incident with her by the accused so far took place while returning after taking bath, reporting the matter to victim 'MP', hearing the matter by the daughter of the accused and then rebuking her by the accused. PW 3 however stated that on knowing about the fact of reporting while accused started rebuking her, she kept herself hidden at the house of one Nepali family where from she was dragged by the accused and his family members by holding her hair and after bringing her to the court-yard of the accused, they physically assaulted her for disclosing the incident to others. For the said assault she got pain on her hair, hand and legs and on being restrained by the mother of the victim 'MP' accused also assaulted mother and father of the victim 'MP'. However her mother (PW 5) has given a total goodbye to the prosecution case by stating that accused Bipul Mili never misbehaved her daughter victim 'NK' and this case was filed by the informant for the alleged assault on Suresh Pradhan (PW 4) by the accused. She also stated that victim was taken to court without her permission.

- 20. If we look at the 164 Cr.P.C. statement of the victim 'MP' and 'NK' given on 28.03.2017, it appears that they have substantially developed the story during evidence in court as mentioned herein before. The victim 'MP' was totally silent regarding reporting of the matter by victim 'NK' to her on river side; rather she has stated that while her mother went to defuse quarrel between victim 'NK' in one side and accused, wife and three daughters of the accused in other side, then the wife and three daughters of the accused physically assaulted her mother (PW 1). Similarly the victim 'NK' also in her statement stated that on being reported the matter to victim 'MP', the daughters, wife and mother of the accused Bipul physically assaulted her. From the statement of the victims, it appears that on 26.03.2017 they are totally silent regarding presence of accused Bipul Mili on that day or assault on the father of the victim 'MP'.
- 21. From the above discussions, it appears that there was some quarrel between the mother of the victim 'MP' and the family members of the accused on 26.03.2017 on the matter of victim 'NK', but so far the other part of the evidence regarding touching her buttock by the accused on the river side are found doubtful. Admittedly there was a guarrel between the informant and the family members of the accused for which an FIR was lodged on 27.03.2017, but no FIR was lodged promptly on the incident of 22.03.2017 or on the alleged sexual assault on the victim 'NK' on earlier occasion by the accused. This raises a doubt on the prosecution version mainly because as per the statement of the victims given u/s 164 Cr.P.C. they have nowhere implicated the accused Bipul Mili in assaulting the victim 'NK' or the informant. The allegations whatever they brought are against the wife, mother and daughters of the accused, but those persons were not before the court facing trial and I.O. also did not chargesheeted them. No such allegation was made before police and the said story is developed during evidence.
- The defence all along denied the allegations of sexual assault on both the victims by the accused on the ground that the victims were similarly aged to the daughter of the accused and used to play with his daughter and due to the quarrel with PW 4 Suresh Pradhan, when accused restrained the

victims to come to his house and this case was filed by developing the allegations. From the totality of facts, it is clear that defence has successfully rebutted the presumption as available to the prosecution u/s 29 of POCSO Act, 2012. As stated earlier, there are heaps of exaggerations in the evidence of witness on material points which amounts to contradiction. The evidence of victims are not trustworthy and reliable. In absence of any presumption, due to the contradictory evidence of PW 4 and PW 5 with other P.Ws, I am of the opinion that accused deserved to get benefit of doubt.

- Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 10 of POCSO Act 2012 against the accused Bipul Mili. As such, accused Bipul Mili is acquitted from the charge u/s 10 of POCSO Act, 2012 and set at liberty forthwith.
- 24. Bail bond executed by the accused and his surety stand extended for another six months from today u/s 437-A Cr.P.C.
- 25. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 (A) Cr.P.C.
- 26. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 27. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 28th day of January 2019 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX

1. Prosecution witnesses -

- PW 1 Smt. Karuna Pradhan (Informant)
- PW 2 Victim 'MP'
- PW 3 Victim 'NK'
- PW 4 Sri Suresh Pradhan
- PW 5 Smt. Ahila Karmakar
- PW 6 Smt. Sukumani Sarma
- PW 7 Smt. Boogly Pradhan
- PW 8 ASI Ashok Ganguly
- 2. <u>Defence witnesses</u>: None
- 3. <u>Court witnesses</u> : None

4. Exhibits by prosecution -

- Exbt.1 FIR
- Exbt.2 Statement of the victim 'MP' given u/s 164 Cr.P.C.
- Exbt.3 Statement of the victim 'NK' given u/s 164 Cr.P.C.
- Exbt.4 Statement of witness Ahila Karmakar u/s 161 Cr.P.C.
- Exbt.5 Sketch map
- Exbt.6 Medical report of victim 'NK'
- Exbt.7 Medical report of victim 'MP'
- Exbt.8 Charge-Sheet.

Special Judge, Sivasagar: