IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.24/2017

U/S- 448 IPC r/w sec 8 of POCSO Act, 2012

State of Assam

-Versus-

Prasanta Ojah

s/o-Lt. Satyanath Ojah

Resident of vill - Hajo Ojahtola

P.S.- Hajo

Dist- Kamrup, Assam

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

A. Syed Ismile Ali, Ld. Advocate ------for the accused

Date of evidence: 20.04.2018, 07.06.201803.08.2018, 20.09.2018,

14.03.2019

Date of Argument:28.03.2019

Date of Judgment: 10.04.2019

JUDGMENT

- The Prosecution case, briefly narrating is that on 22.07.2017 the complainant

 Sri Ram Kumar Das lodged an ejahar alleging that on that day at about 2.30 p.m,
 the accused—Prasanta Ojah entered into the bedroom of his house and commit bad act with her minor daughter by touching her private parts and kissing on her chest.
 Hence, this case.
- 2. On the basis of the said ejahar, Hajo P.S Case No. 557/17 U/S 448 of IPC r/w Section 8 of POCSO Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 448 IPC r/w Sec 8 of POCSO Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 448 IPC r/w Sec 8 of the POCSO Act, 2012 against accused—Prasanta Ojah. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 6 (six) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and declined to adduce evidence.

5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 22.07.2017 at about 2.30 p.m at village Hajo Nayanpur under Hajo P.S committed house trespass by entering into the dwelling house of the informant with intent to sexually assault the minor daughter of the informant and, thereby, committed an offence punishable U/S- 448 of the POCSO Act, 2012?
- (II) Whether the accused person on the same date, time and place committed sexual assault upon the minor daughter of the informant and, thereby, committed an offence punishable U/S- 8 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the evidences on record.
- 7. P.W.1, is the prosecutrix. She stated that informant of this case is her father. She knows the accused person. The incident took place last year during summer vacation (after two days of summer vacation in July month). P.W.1 stated that at the relevant time, she was handling the laptop of her uncle. Then, the accused came inside her room and showed his sexual organ (penis) to her. P.W.1 rushed to inform her mother (P.W.3). The accused followed her and lifted her from back to the courtyard and kissed her on her cheeks. The accused rebuked her brother also. Thereafter, P.W.1 informed the incident immediately to her mother. In the meantime the accused left her house. Her father them lodged a case and she was taken to police station. Thereafter she was brought before the Magistrate for recording her statement. Ext.1 is the statement. Ext. 1 (1, 2 & 3) are her signatures.
- 8. In her cross-examination, P.W.1 revealed that in the room where she was handling the laptop, her brother was watching T.V. The accused came to her grand maa's house for repairing a gas stove. Her grandmother's room is situated at a little distance away. She denied the suggestion that the accused did not do her anything except kissing her in the courtyard, out of affection.
- 9. P.W 2 is the informant. Prosecutrix is his daughter. P.W.2 disclosed that the date of birth of the prosecutrix is 01.08.2009 and her age is approximately 9 years. P.W.2 stated that he knows the accused person, who is a gas repairing mechanic hailing from his village. At the time of incident, P.W.2 was not at home. On his arrival, he came to know that the accused entered his house and he asked him to leave the room. When the accused went out, he lifted the prosecutrix in his arm and gave a kiss on her cheeks. At that time, P.W.2 was inside the room. The incident was witnessed by his mother, wife and one Kamaljyoti Medhi. Thereafter, the accused left their house and he chased him. P.W.1 (prosecutrix) told him that she has narrated the incident to her mother. Then, P.W.2 lodged the ejahar and police interrogated him. Police collected the photocopy of the birth certificate of the prosecutrix. P.W.2 lodged the ejahar which was written by one Zeenat Ahmed (scribe). P.W.2 put his

signature on the ejahar (Ext.2). Ext.3 is the printed form and Ext. 3 (1) is his signature.

In his cross-examination P.W.2 stated that he did not see what happened inside the room. He also did not witness the second incident that took place in the courtyard.

10. P.W 3 Smti. Bhaigya Deka is the wife of the informant and mother of the prosecutrix. She stated that the accused used to come to her house as he was a cooking gas mechanic. On the day of the incident, accused came to the house of her mother-in-law, situated in the same compound. At that time, P.W.3 was washing dishes outside the house. She saw the accused lifting her daughter (prosecutrix) on his lap and he planted kisses on her saying that she will be a beautiful girl. Then, P.W.3 asked him to drop the prosecutrix down as she did not like such type of behavior. At that time, accused was in their courtyard. When P.W.3 came to the house, prosecutrix told her that the accused showed his private part (penis) to her. On hearing this, P.W.3 informed the incident to her husband (P.W.2). In the mean time, accused left their house. Thereafter, P.W.2 lodged the case against the accused. P.W.3 disclosed that her daughter was reading in class-II and she was 8 years old at the time of occurrence. Her daughter was born on 01.08.2009. Police interrogated her.

In her cross-examination, P.W.3 revealed that at the time of incident prosecutrix was inside the room and her son was also there in the same room. She did not see as to what happened inside the room.

11. P.W.4, Smti Golapi is the grandmother of the prosecutrix. She stated that the incident took place about a year ago around 2.30/3.00 p.m. Accused is a gas stove repairing mechanic. On the date of occurrence, the accused came to her house to repair the gas stove. But P.W.4 told him to come afterwards as she has no money on that day. Then the accused left her house. As P.w.4 was about to have the lunch in her house, she just looked outside and she saw the accused lifting the prosecutrix and taking her towards near her mother (P.W.3), who was washing utensils. At this, P.W.4 scolded the accused and asked him to put down the prosecutrix. P.W.4 disclosed that the age of the prosecutrix was 8 years at the time of occurrence. Thereafter, her son (informant) lodged the ejahar and police arrived the house.

P.W.4 came to know from the police that the accused did some bad act with the prosecutrix. In her cross, P.W.4 disclosed that the informant stays in another house.

- 12. P.W.5, Kamal Jyoti Medhi deposed in his evidence that he knows the informant and prosecutrix of this case but he did not know the accused. The incident took place in the month of July, 2017 at about 2/2.30 p.m. On that day, he was sitting inside the under construction house of the informant as he was invited for lunch. At that time, he saw the accused lifting the prosecutrix, aged about 9 years in his arms and kissed her on her cheeks and P.W.5 stated that he saw the prosecutrix preventing the accused from doing so. Then the accused put her down from his arms. In his cross, P.W.5 stated that he did not remember as to what he stated before the police regarding the incident.
- 13. P.W.6, S/I Bhanita Das is the I/O of this case. She stated that on 22.07.2017, she was working as Attached Officer at Hajo P.S. On that day the informant—Ram Kumar Das lodged an ejahar in Hajo P.S. Thereafter O/C, Hajo P.S registered a case at around 3.30 p.m bearing Hajo P.S Case No.557/2017 U/S-448 of IPC R/W section 8 of POCSO Act, 2012 and directed her to investigate the case. Accordingly, she visited the place of occurrence along with the staffs at 4.30 p.m on that very day. P.W6 recorded the statements of the witnesses including the informant and the victim. She prepared the sketch map and arrested the accused— Prasanta Ujha and forwarded him to the Court. P.W6 sent the victim to the court for recording her statement U/S-164 Cr.P.C. Thereafter, P.W6 completed the investigation and on finding sufficient evidence against the accused person, she submitted the charge-sheet against the accused person U/S-448 IPC R/W section 8 of POCSO Act. Ext.3 is the sketch-map and Ext.3 (1) is her signature. Ext.4 is the charge-sheet and Ext.4 (1) is her signature.

In her cross-examination, P.W.6 stated that as per the sketch map the neighbouring people are informant's mother, Dinesh Medhi, Dinabandhu Deka. But, she did not record their statements. Dinesh Medhi has a half constructed house but he does not stay there. P.W.6 did not record the statement of the brother of the prosecutrix. P.W.6 recorded the statement of the relatives of the prosecutrix and an independent witness—Kamaliyoti Medhi.

- 14. I have heard the arguments of both the sides. Perused the evidences on record.
- 15. In this case, charge was framed u/s 8 of POCSO Act. Now, question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence. Now, **Sexual Assault** is defined **U/S 7 of POCSO Act** as "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." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7 of the Act.
 - 16. Here, in this instant case, the accused is charged u/s 448 IPC R/W section 8 of POCSO Act. Now, it has to be seen as to whether the accused entered into the dwelling house of the informant with the intent to commit an offence and he committed sexual assault upon the prosecutrix, daughter of the informant.
 - 17. It is in the evidence of the prosecutrix (pw-1) that at the time of occurrence while she was handling the laptop of her Uncle, the accused entered the room and showed his sexual organ (penis) to her. Her evidence further discloses that as she ran towards her mother (pw-3), the accused followed her and he lifted her from the back to their courtyard and kissed her on her cheeks. She told the incident to her mother (pw-3). Her evidence is supported by Pw-3 as she stated that she was washing dished outside and when she came to the house, pw-1 showed his private part (penis) to her. Pw-3 told the incident to her husband (pw-2). It has come out from the evidence of pw-2 he was not present in the house when the incident took place . but on his arrival, he came to know that the accused entered his house and he asked the accused to leave . Pw-2 testified that when the accused went out, he lifted pw-1 in his arms and gave a kiss on her cheeks. Coming to the evidence of pw-1, she has stated that the accused had come to her grandma's house for repairing a gas stove. Her evidence is corroborated by pw-3, Pw-4,Pw-5 who have made clear that they witnessed the accused lifting the prosecutrix in the courtyard and kissing her on the cheeks. Pw-3 asked the accused to leave her from his hands and put her down.

- 18. As regards the offence of house trespass U/S-448 of IPC. So, the main evidence in this case is the victim herself. She has stated that at the relevant time, her mother was washing dishes outside the house. Her version is that the accused entered her room and he showed her his penis. Her evidence before the court corroborated with her statement U/S-164 Cr. P.C and U/S-161 Cr. P.C.
- 19. It has come out from the evidence of that the victim was 9 years old at the time of incident.
- 20. So, it is clearly proved that the accused entered into the house of the victim with the intent to commit the offence of sexual assault. This attracts section 448 IPC R/W section 8 of the POCSO Act.
- 21. In the result, from the facts and circumstances of the case and above discussion , it is held that the prosecution has succeeded in bringing home the charges under section 448 IPC R/W section 8 of the POCSO Act against accused Prasanta Ojah beyond all reasonable doubt. Hence, he is held guilty of committing the offence punishable under section 448 IPC R/W section 8 of the POCSO Act and is convicted under the said section of law.
- 22. The minimum sentence prescribed under Section 448 IPC R/W section 8 of the POCSO Act is rigorous imprisonment for seven years which cannot be modified or altered. Therefore, keeping in view the nature of the offence, the Probation of Offenders Act is not applicable to this instant case. As such, accused is not entitled to get the benefit under the provisions of the said Act.
- 23. Heard the accused on the question of sentence. Also heard the Learned Defence Counsel as well as the Addl. Public Prosecutor. Accused has stated that he has not committed the offence and he has no earlier criminal antecedent. He submitted that he is a petty businessman and also works as a labourer. He has pleaded leniency in awarding the punishment.
- 24. In this instant case, the commission of sexual intercourse with the victim girl by the accused was penetrative sexual assault and the victim girl was alone at the time of occurrence. The accused, being the neighbour, this act of the

accused has caused mental trauma to the victim, who was minor child at the time of occurrence.

- 25. Considering the entire facts and circumstances of the case , the grave nature of the offence and the mental injury suffered by the child victim, the accused –Prasanta Ojah is sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs 10,000/- (Rupees ten thousand) only in default to undergo rigorous imprisonment for 1 (one) year , for the offence under section 4 of POCSO Act., which in my opinion ,will meet the ends of justice in this case.
- 26. The period of detention already undergone by the accused will be set off from the sentence of imprisonment.
- 27. His bail –bond stands cancelled . Issue Jail Warrant.
- 28. Now, coming to the aspect of compensation to the victim, who is a minor girl. She needs to be provided with restorative and compensatory justice. So, the Learned Secretary, District Legal Service Authority, Kamrup, Amingaon is directed to assess and grant adequate compensation to the victim (P.W.1). The said compensation amount shall be used by the parents of the victim for her welfare and rehabilitation.
 - 29. The Judgment is delivered in open Court and written on separate sheets.
 - 30. A free copy of the Judgment be furnished to the convict immediately. A copy of this order and Judgment be sent to the District Magistrate, Kamrup, Amingaon as per provision of law.
 - 31. Given under the hand and seal of this Court on the 10th day of April, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, is the prosecutrix

P.W 2 is the informant

P.W 3 Smti. Bhaigya Deka

P.W.4, Smti Golapi

P.W.5, Kamal Jyoti Medhi

P.W.6, S/I Bhanita Das

Prosecution Exhibit

Ext.1 is the statement of the prosecutrix recorded U/S-164 Cr. P.C.

Ext.3 is the printed form

Ext.3 is the sketch-map

Ext.4 is the charge-sheet

Special Judge, Kamrup, Amingaon