#### IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present:

Shri A. Hazarika, A.J.S.,

Special (POCSO)-cum- Sessions Judge,

Dhemaji,

## JUDGMENT IN SESSIONS CASE NO. 03 (DH) of 2017.

(G.R. Case No.452/2016, Dhemaji P.S. Case No.187/2016 Under Sections 448/354 of the Indian Penal Code R/W Sec. 8 of POCSO Act, 2012)

The State of Assam

- Versus -

Shri Sumu Gogoi @ Prasanta

.....Accused Person

**Committing Magistrate:-**

Shri P.C. Kalita,

Chief Judicial Magistrate,

Dhemaji.

Appearance:

Shri P.C. Boruah,

**Public Prosecutor** 

.....For the State

Shri J. Buragohain and

Shri Rajib Borah

Defence Counsel s

.....For the Accused person

Date of committal

Date of Charge

: 09-01-2017.

Date of prosecution evidence

: 04-02-2017. : 23-02-2017,

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: 09-03-2017.

Date of recording Statement of Accused

: Nil.

Date of defence evidence

: 09-03-2017,

Date of arguments

Date of Judgment

:**36**-03-2017.

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#### JUDGMENT

## Case of the Prosecution:

- 1. The prosecution case in brief is that on 08-06-2016 complainant-Smt. Aruna Borsaikia , W/O Shri Lachit Borsaikia, R/O Vill. Hatigarh Dhunaguri , P.S. Dhemaji District- Dhemaji lodged an FIR to the effect that on that day in the afternoon at about 3 P.M. while her daughter- the victim (hereinafter referred to as X) was alone at her house, cleaning the house ,the accused-Sumu Gogoi entered into her house and grabbed her from behind and touched her breasts. When she (victim) shouted the accused ran away from the house. On the basis of the said FIR a case being Dhemaji P.S Case NO 187 of 2016 u/s 448 / 354 of the IPC R/w Section 8 of POCSO Act was registered.
- 2. Thereafter, the case was investigated and on the basis of the materials available, charge- sheet was submitted under Sections 448/354 of the Indian Penal Code read with sec. 8 of the POCSO Act, 2012 against the accused- Sumu Gogoi.
- 3. The case being exclusively triable by the Sessions Court the same was committed to the Court of Sessions, Dhemaji by the learned Chief Judicial Magistrate, Dhemaji on 09-01-2017.

#### **Charge:**

4. Charges Under Section 8 of the Protection of Children from Sexual Offences Act ,2012 read with sections-448/354 of the Indian Penal Code were framed against the accused person-Sumu Gogoi by the court on 04-02-2017 to which the accused person pleaded not guilty and claimed to be tried.

#### **Evidence**:

- 5. To prove the guilt of the accused, Prosecution examined three witnesses.
- **5.(a)** PW-1 the victim X has evidenced that she knew the accused person present in the dock. Complainant-Aruna Saikia is her mother. The incident took place about 7 months ago. It was about 3 PM and she was cleaning the house. She was alone at that time. At that time a person came and grabbed her from behind. She thought it was the accused-Sumu Gogoi but she could not clearly make out. Then the person touched her breast. She shouted and then he ran away. Her mother filed the case. Magistrate recorded her statement and her medical was done.

This witness has exhibited Exhibit-1 as the statement u/s 164 of Cr.P.C. and Exhibit-1(1 & 2 ) as her signatures.

During the cross examination of the witness, she has stated that she cannot actually say who had caught her from behind. She cannot remember what she had told before the Magistrate.

**5 (b).** PW-2 Smti Aruna Borsaiukia has evidenced that she knew the accused present in the dock. Victim- X is her daughter. It was about 7 months ago. On the day of incident, she had gone to the house of her neighbour. Then her son Krishna Borsaikia

Sussion Judge Chanab went and called her home. She came home and found out from X that someone had come and hugged from the back and she thought that it was Sumu Gogoi (accused). Then she had filed the case.

This witness exhibited Exhibit-2 as the FIR and Ext-2(1) as her signature.

During the cross-examination of this witness, she stated that the victim could not positively identify the person who had grabbed her.

**5.(c)** PW3 Shri Lachit Borsaikia has evidenced that he knew the accused person present in the dock. X is his daughter and Aruna Borsaikia is his wife.. The incident took place about 7 months back in the evening time. On that day he was not present at his home, and after coming back home, he got to know from his wife that while X was alone at home someone had come and grabbed her from the back.

Defence declined to cross-examine this witness.

# Statement of Accused under Section 313 Cr.PC & Defence Evidence:

6. The statement of the accused person- Shri Sumu Gogoi is recorded under Section 313 of the Code of Criminal Procedure on 09-03-2017 to which the accused person denied the charge and stated that this is a false case.

#### **Point For Determination**

7. The moot point for determination is as to whether the accused person Sumu Gogoi committed house trespass into the house of X in order to commit offence of sexual assault upon X, a minor girl by touching her breast and private parts and thus committing an offence punishable under Sections 448/354 of the Indian Penal Code read with sec. 8 of the Protection of Children from Sexual Offences Act , 2012.

### **Discussion and Conclusions**

- 8. I have heard Shri J. Buragohain and Shri Rajib Borah , the learned counsels for the defence as well as the Shri P.C. Boruah, the learned Public Prosecutor. I have also perused the evidence and other materials on record.
- 9. The brief case of the Prosecution is that on 08.06.2016 the accused Shri Sumu Gogoi had entered into the house of X and had touched her breast and other private parts and when she raised an alarm the accused had fled from the house.

On perusal of the evidence on record it is seen that the victim PW-1 X has stated that a person had entered their house , while she was alone in the house and had grabbed her and touched her breast and had fled when she shouted. But X had categorically stated that she could not make out who the person was and only thought that it was the accused Sumu. Even the evidence of PW-2 , mother of X, would reveal that she was informed by X that someone had come and grabbed her and that X had thought it was Sumu. PW-2 has gone to clearly specify tat X could not make a positive identification. Even the evidence tender by PW-3 father of X reveals that someone had come and hugged her from behind. It does not in any way implicate the accused.

Therefore, eventhough all the witnesses including the victim have evidenced that someone had entered therein house and had grabbed X and touched her private parts



- , there is not positive identification that the perpetrator of the said offence was the accused Shri Sumu Gogoi. It is tirth law of criminal jurisprudence that merely on suspicion a person cannot be convicted of any offence. There is no justifiable circumstance as to why the victim X could not identify the accused. Be that as it may, since the accused Shri Sumu Gogoi has not been identified as the perpetrator of the crime the benefit has to be accorded to the accused.
- 10. Therefore, from the evidence on record and the discussion as aforesaid that accused Shri Sumu Gogoi cannot be held to be guilty of having entered into the house of X and thereafter touching her private parts and thus outraging her modesty due to the fact that there is no positive identification by the victim or the other witnesses about the accused having committed the said offences and therefore the benefit of doubt has to be accorded to the accused. As such the accused-Sumu Gogoi is not found guilty of the charge u/s 448 / 354 of the Indian Penal Code read with sec. 8 of the POCSO Act, 2012

#### **Decision:**

11. Accordingly, the accused-Sumu Gogoi is not found guilty of the charge u/s 448 / 354 of the Indian Penal Code read with sec. 8 of the POCSO Act, 2012.

#### Order:

- 12. The accused person Sumu Gogoi is acquitted of the charge u/s 448 / 354 of the Indian Penal Code and sec. 8 of the POCSO Act.
- 13. Bail bond executed by the accused person and surety are extended for next six months as per the provision of Section 437 A of Cr.P.C.
- 14. Considering the facts of this instant case, the matter is not referred to District Legal Services Authority for granting compensation u/s 357 A of Cr.P.C.
- Judgment is pronounced in open court. Case is disposed on contest.
   Given under my hand and seal on this the 23<sup>nd</sup> day of March 2017.

( A. Hazarika )

Special (POCSO) -cum-Sessions Judge,

Dhemaji

Dictated & corrected by me :-

( A. Hazarika )

Special (POCSO) -cum-Sessions Judge,

Dhemaji

Transcribed & typed by me -

(Shri B.K. Buragohain), Steno. Grade-I.

## Appendix:

## **Prosecution Witnesses**

P.W. 1 - X,

P.W. 2 - Smt Aruna Borsaikia, (complainant),

P.W.3 - Shri Lachit Borsaikia,

## **Defence Witnesses:-**

None,

## **Prosecution Exhibits:**

Exhibit-1 - Statement of X u/s 164 Cr.P.C.

Exhibit-1(1 & 2) - Signatures of X,

Exhibit-2 - FIR

Exhibit-2(1)- Signatures of Smt Aruna Borsaikia (complainant)

**Defence Exhibits: None** 

(A. Hazarika )
Special (POCSO) cum-Sessions Judge,

Dhemaji