# IN THE COURT OF SPECIAL JUDGE, NORTH SALMARA, <u>ABHAYAPURI</u>

Present: Shri P. Bora, A.J.S.

Special Judge

North Salmara, Abhayapuri

## **Special (P)44 (A) of 2019**

U/S 8 of POCSO Act,2012

State of Assam Vs Dhrubajyoti Das

## **Appearance**

| Smti. R.Choudhury      | <br>Special P.P. for the State. |
|------------------------|---------------------------------|
| Mr. M. Kalita          | <br>Ld. Defence Counsel.        |
| Charge framed on       | <br>18.12.2019                  |
| Evidence recorded on   | <br>19.02.2020                  |
| Argument heard on      | <br>28.02.2020                  |
| Judgment Pronounced on | <br>06.03.2020                  |

### <u>JUDGMENT</u>

- The case for the prosecution in brief is that on 22.06.2018, the informant Alok Kumar Das lodged an F.I.R before the office-in-charge of Abhayapuri Police Station alleging *inter alia* that his daughter who used to go her school in the auto-rickshaw which was driven by the accused and on the day of occurrence the accused person misbehaved with his daughter, put her some ridiculous question and wanted to touch the private parts of the body of his daughter. Hence, the case.
- 2 After receiving the said ehahar, the officer in charge of Abhayapuri Police Station was pleased to register the same vide Abhayapuri P.S case No. 349 dated 22.06.2018. Police started

investigation and after completion of the investigation the investigating officer submitted charge sheet against the accused person U/S 8 of POSCO Act, 2012.

- 3. The accused person appeared before court to face the trial. The copies of all the relevant documents furnished to the accused. After perusing and considering all the relevant documents referred to U/S 173 Cr.P.C, finding a prima facie case a formal charge U/S 8 of POCSO Act, 2012 has been framed against the accused and the same on being read over and explained to the accused person to which accused person pleaded not guilty and claimed to be tried.
- To bring home the charge against the accused person in this case the prosecution side has adduced and examined as many as 2 (two) witnesses including the informant and victim, but defence examined none. After perusing and considering the evidence on record, examination of the accused person u/s 313 Cr.P.C is dispensed with.

#### **5.POINTS FOR DECISIONS**

Whether the accused person on 15.06.2018, committed any sexual assault upon the victim and thereby committed an offence punishable U/S 8 of the POCSO Act, 2012.

## 6. **DECISION AND REASONS FOR DECISION-**

I have gone carefully through the entire evidence of the record. I have also heard and considered the argument put forwarded by the Ld Spl.P.P for the State as well as Ld. Counsel for defence. In this case the prosecution side has examined Sri Alok Kumar Das, the father of the victim, who is the informant of this case as PW-1 and exhibited the F.I.R vide Ext. 1 and Ext. 1(1) is the signature of PW-1.

7. In course of evidence PW-1, who is the informant of this case stated that he himself have not written the F.I.R and does not know who has written the F.I.R. It also reveals from the evidence of PW-1 that neither he himself read out the contents of the F.I.R nor the contents of

the F.I.R was read over to him by anyone and hence he does not know what has been written in the F.I.R. Thus, it is revealed that PW-1, who is the informant of this case expressed his ignorance about the fact as alleged in the F.I.R and in my considered view such kind of ignorance on the part of the informant about the fact as alleged in the F.I.R definitely weaken and reduced the weight, authenticity and credibility of the F.I.R, which puts the machinery of law into motion. Accordingly, on this point the benefit goes to the defence.

8. PW-1, the father of the victim and the informant of this case in course of evidence stated that about one year back on a day he heard that while his daughter, who was coming to her house from her school by boarding in the auto-rickshaw of the accused person, suddenly when a chaotic situation arose among the passengers, who were also coming along with his daughter in the auto-rickshaw, which was driven by the accused person, then the hands of the accused person fell down on the body of his daughter, but in course of cross examination PW-1 clearly stated that after lodging the F.I.R, he came to know that while the chaotic situation arose among the passengers, who were coming in the auto-rickshaw of the accused person along with his daughter, the hands of the accused person fell down on the body of his daughter unintentionally and in fact the accused person actually wanted to save his daughter from sustaining any kind of injury by falling down from the auto-rickshaw. In course of cross examination PW-1 reiterated that so far his knowledge is concerned the accused person never touched the body of his daughter with any bad intention and the said fact was also stated to him by his daughter. That apart, PW-1, the informant, who is the father of the victim in course of cross examination clearly stated that in fact he has lodged the F.I.R as pressurized by the passengers, who were coming in the auto-rickshaw of the accused person along with his daughter and the F.I.R was lodged by him only due to some misunderstanding. PW-1 further stated that so far his knowledge is concerned the accused person never committed any misdeed or mischief with his daughter.

- 9. Thus, after perusing and considering the evidence of PW-1, the informant along with the F.I.R, which was exhibited by the prosecution vide Ext.1, the oral testimony of PW-1, the informant, who himself lodged the F.I.R appears to be not in conformity with the fact as alleged in the F.I.R.
- 10. In this case the prosecution side has examined the daughter of PW-1, the victim as PW-2. The prosecution side has also exhibited the statement of PW-2, the victim, as recorded u/s 164 Cr.P.C vide Ext.2 and Ext. 2(1) and Ext. 2(2) are the signatures of PW-2.
- 11. Now let us discuss, assess and evaluate the evidentiary value of the victim, who was examined by the prosecution as PW-2. In course of evidence PW-2 stated that about one year back while she was studying in Class-X at Abhayapuri Monfort School, she used to come and go to her school by the auto-rickshaw of the accused person. PW-2 further stated that about one year back on a particular day after fishing her school hour when she along with her friends were coming to their house in the auto-rickshaw of the accused person, on their way while they make noise in the auto rickshaw, the accused person, who was driving the auto-rickshaw, rebuked to control them and while she was about to fall down from the auto-rickshaw by making noise, the accused person saved her by holding her hands and thereafter the accused person also rage and rebuked her, in connection with which her father has lodged the F.I.R. In course of cross examination PW-2 stated that the accused person never hold her hands with any bad intention, rather the accused person hold her hands only to save her while she was about to fall down from his auto rickshaw. PW-2 further stated that the accused person on whose auto rickshaw she used to come and go to her school never make any mischief or misdeed with her not only on that day but on previous occasions also. In course of cross examination PW-2 clearly stated that the accused person is totally innocent and her father has lodged this case only due to some misunderstanding. In this case although the prosecution side has

exhibited the statement of the victim as recorded u/s 164 Cr.P.C, vide Ext. 2 and Ext. 2(1) and Ext. 2(2) are her signatures, but in course of cross examination PW-2 clearly stated that she has given her statement as tutored and forced by the police personnel.

- 12. The above is the threadbare discussion of the evidence on record.
- 13. After perusing and considering the evidence on record in its entirety and considering the argument put forwarded by the learned counsel for the prosecution as well as defence, it appears that in this case the prosecution side has failed to produce any solid and concrete evidence against the accused person. The evidence of P.W.1, who is the informant as well as father of the victim of this case appears to be not only in conformity with the fact as alleged in the F.I.R, but at the same time, it appears that PW-1 was completely silent about the involvement of the accused person in commission of the offence as alleged. That apart PW-1 who is the informant of this case has also expressed his ignorance about the fact as alleged in the F.I.R, and such kind of ignorance about the fact as alleged in the F.I.R, on the part of the informant definitely weaken and reduced the weight and authenticity as well as credibility of the whole prosecution case. None of any single witnesses as examined by the prosecution in support of its case supplements any fuel to strengthen the case of the prosecution. Even from the evidence of the victim, who is the star witness of the prosecution case, the prosecution side has failed to inspire any support to build up its case as alleged against the accused person as from the evidence of victim and the informant, who is the father of the victim. the prosecution side has totally failed either to collect or accumulate materials or evidence involving the accused person commission of the offence as alleged. After perusing and considering the evidence on record no any inference can be drawn from the evidence of any single witnesses that the accused person is in any way involve in commission of the offence as alleged.

- 14. In the ultimate analyses on the light of above discussions, it appears that in this case the prosecution side has failed to produce any single iota of evidence against the accused person which is sufficient to fasten the accused with the charge as alleged against him beyond all reasonable doubt. Thus, in this case the prosecution has not only failed to operate the switch of the prosecution case for ignition but could not even identify and point out the proper switch of the prosecution on the board itself, hence the court have no any alternative but to acquit the accused person from the charge as levelled against him.
- 15. I therefore acquit the accused person from the charge levelled against him. I also released the accused person from liability of bail bond and set him at liberty.

Given under my hand and seal of this court on this 06  $^{\rm th}$  day of March/2020.

Dictated and corrected by me

Special Judge North salmara, Abhayapuri Special Judge North salmara, Abhayapuri

## **APPENDIX**

1. Prosecution Exhibits

Exhibit 1 - The FIR

Exhibit 1(1) - The signature of PW-1

Exhibit 2 - The statement of P.W.2 U/S

164 Cr.P.C.

Exhibit 2(1)

Exhibit 2(2) - The signatures of PW-2

2. Material Exhibit by prosecution

Material Ext.1- Nil

3. <u>Defence Exhibits</u> NIL

4. Prosecution Witnesses

PW1 Musstt. Morjina Nessa, the informant

PW2 Lal Bhanu, the victim

5. <u>Defence Witnesses</u> NIL

6. <u>Court Witnesses</u> NIL

Special Judge

North Salmara, Abhayapuri