IN THE COURT OF SESSIONS JUDGE CUM SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, Special Judge, Sivasagar

Spl. (P) Case No. 6 of 2016 U/S 8 of POCSO Act (Arising out of Nazira P.S. Case No. 57/2016)

State of Assam

-Vs-

Sri Ashok Kalita Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P. P.

For the accused : Sri Rahul Baruah, Advocate

Date of framing Charge : 16.05.2016

Dates of Evidence : 12.07.2016, 25.04.2017.

 Date of S/D
 :
 16.05.2017

 Date of Argument
 :
 08.06.2017

 Date of Judgment
 :
 17.06.2017

<u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 16.03.2016, the informant Md. Ahidur Rahman lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, that on that day, at about 5.10 a.m. his daughter victim 'X' (name withheld) went for private tuition at the residence of the accused and during said tuition class, the accused-teacher molested her. On being reported, the informant went to the accused and asked him about the incident to which no proper reply was given.
- 2. On receipt of the FIR, Nazira P.S. Case No. 57/2016, U/S 354 (A) IPC, read with Section 8 of POCSO Act, 2012 was registered and investigated

into the case. On 17.03.2017, the accused was arrested and was forwarded to jail custody. On completion of investigation, I.O. has submitted Charge-Sheet U/S 354 (A) IPC, read with Section 8 of POCSO Act, 2012 against accused Ashok Kalita.

- 3. Vide order dated 28.03.2016, the accused was allowed to go on bail. After furnishing copies of relevant papers u/s 173 Cr.P.C, vide order dated 16.05.2016, my learned predecessor in office has framed the charge U/S 8 of POCSO Act, 2012 against accused to which he pleaded not guilty. During trial, prosecution side has examined four witnesses including the victim 'X'. and I.O.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of partial admission of scolding the victim for her poor performance in study and for betterment but without any sexual intention. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. Rahul Baruah, learned defence counsel and gone through the evidence and documents. I have considered the submission of both the sides.

POINT FOR DETERMINATION IS

6. (i) Whether on 16.03.2016, accused has committed sexual assault on the victim 'X'?

DECISION AND REASONS THEREOF:

P.W. 1 the victim X, in her evidence deposed that while she was a student of class 10, on the date of the incident, she went to tuition at the residence of the accused. For doing some wrong home works, accused pat her. On this incident, she informed the matter to her parents and out of anger, her father lodged the FIR. She gave her statement in court vide Ext. 1. In her cross examination she admitted that she was not misbehaved by the accused. Due to punishing her, she got angry.

- 8. P.W. 2 Md. Ahidur Rahman, the father of the victim, in his evidence deposed that on 16.03.2016, his daughter victim X in crying condition, on returning from the house of the accused after taking tuition. She told him that her teacher has patted her. On this out of anger, he lodged the FIR as Ext. 2. In his cross examination he deposed that he is not interested to proceed the case.
- 9. P.W. 3 Safia Begum, the mother of the victim, deposed that her daughter told him that her tuition teacher has patted her. She also deposed that due to miss understanding, her husband filed this case. Accused did not committed any misbehaviour to her daughter.
- 10. PW-4 SI Tuniram Neog (I/O) of this case deposed in detail about the investigation done by him PW 4 also proved the sketch map of the PO as Exbt. 3, charge sheet as Exbt. 4, medical report of the victim as Exbt. 5 and the seizure list by which birth certificate of the victim was seized as Exbt. 6. In his cross-examination, he admitted that he has not examined any of the family members of the accused. As per medical examination report, no injury was found.
- 11. From the above evidence on record, particularly from the evidence of victim (PW 1), it appears that except her, there was no eye witness of the occurrence. In her evidence-in-chief she categorically stated that for doing some wrong in the home work her teacher, accused pet her. In her cross-examination, she admitted that accused did not misbehaved her. The above fact was confirmed by the P.W. 2 and P.W. 3, the parents of the victim. P.W. 3 in her evidence admitted that due to some misunderstanding of the fact, her husband lodged the FIR. P.W.2, the father of the victim admitted that out of anger, he lodged the FIR against the accused and presently he is not interested to proceed with this case.
- During 313 Cr.P.C. examination, the accused has admitted that due to non-completing the home work, he has scolded the victim. He also Spl. (P) Case No.6 of 2016

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admitted that he did not misbehave the victim and he has to scold only to improve her education, but the matter was taken otherwise by the victim.

- 13. From the evidence of the victim as well as her parents it is apparent that due to some miscommunication the FIR was lodged. From the categorical admission of the victim, it is apparent that there was no misbehavior by the accused and the ingredient of sexual intent on the part of the accused-teacher is missing during the incident of pet/scolding the victim. Sexual intent is the core ingredient for an offence U/S 8 of POCSO Act.
- 14. From the above discussions, I am of the considered opinion that prosecution has totally failed to prove the ingredients of offence U/S 8 of POCSO Act, 2012 or any other minor offence against the accused beyond reasonable doubt. As such, accused Ashok Kalita is acquitted from the charge U/S 8 of POCSO Act and set at liberty forthwith.
- 15. The bail bonds executed by the accused and his surety stand extended for another six months from today.
- 16. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 17. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 18. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 17th day of June, 2017 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX.

1. Prosecution witnesses:

- P.W.1 Victim X (name withheld)
- P.W.2 Md. Ahidur Rahman (informant)
- P.W.3 Mrs. Safia Begum P.W.4 Sri Tuniram Neog (I.O.)
- 2. <u>Defence witnesses</u> -Nil.
- 3. <u>Court witnesses</u> -Nil.
- 4. Exhibits by prosecution -
 - Exbt.1 164 Cr.P.C. statement of the victim 'X'
 - Exbt.2 FIR
 - Exbt.3 Sketch map.
 - Exbt.4 Charge-Sheet.
 - Exbt.5 Medical Report of victim.
 - Exbt.6 Seizure list.

Special Judge, Sivasagar: