DISTRICT: KAMRUP (M), GUWAHATI

IN THE COURT OF THE SESSIONS JUDGE, KAMRUP (M) GUWAHATI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Sessions Case No. 157 of 2018

Under Section 12 of the POCSO Act, 2012

State of AssamComplainant

Versus

Shri Bhabesh DasAccused

Charge framed on : 20.09.2018

Evidence recorded on : 12.11.2018, 11.02.2019 and 25.07.2019.

Statements recorded on : 19.08.2019

Arguments heard on : 19.10.2019

Judgment delivered on : 30.10.2019

Advocates who appeared in this case are:

Smt. Deepa Bezbaruah, Special. P.P., for the Prosecution.

Shri Jogesh Roy Choudhury, Advocate for the accused.

JUDGEMENT

1. This case was registered on 29.03.2017, at Noonmati Police Station, under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act"), based on a First Information Report (in short "the FIR") filed by one Smt. Pramila Haloi, against accused Shri Bhabesh Das.

- 2. The case of the prosecution, as stated in the F.I.R, is that on 28.03.2017, at around 05.00 P.M., at Bijuli Nagar, Forest Gate, Narengi, under Noonmati Police Station, while the minor daughter of the informant (hereinafter referred to as "the victim girl") was brooming their courtyard, their adjacent neighbor namely, the accused Bhabesh Das, appeared in the compound of his house in naked condition and gave obscene indication to the victim girl. The accused Bhabesh Das had been doing the same frequently and mentally tortured the informant and the victim girl. Therefore, the informant lodged an F.I.R. of the incident with the Noonmati Police Station on 29.03.2017.
- **3.** Based on the F.I.R., the Officer-in-charge of the Noonmati Police Station registered the case No. 196/2017, under Section 12 of the POCSO Act against the accused Bhabesh Das and entrusted W.S.I. of Police namely, Smt. Pallabi Das to investigate the case. Accordingly, W.S.I. of Police Pallabi Das to investigated the case.
- **4.** During the course of investigation, the investigating officer recorded statements of the witnesses. The statement of the victim girl was also recorded by the Magistrate. After completion of investigation, the investigating officer submitted charge-sheet for an offence under Section 12 of the POCSO Act against the accused Bhabesh Das before this court. Hence this case.
- **5.** During trial, my learned predecessor framed a charge under Section 12 of the POCSO Act against the accused Bhabesh Das. When the contents of the charge were read over and explained to the accused person, he pleaded not guilty and claimed to be tried.
- **6.** The prosecution, in order to prove its case, examined three witnesses. The defence did not examine any witness.
- **7.** In his examination under Section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations leveled against him are false and baseless.
- **8.** The point for determination in this case is:-

Whether on 28.03.2017, at around 05.00 P.M., at Bijuli Nagar, Forest Gate, Narengi, under Noonmati Police Station the accused Bhabesh Das sexually

harassed the victim girl and thereby committed an offence punishable under Section 12 of the POCSO Act, 2012?

If so, what punishment does he deserve?

DECISION AND REASONS THEREOF

- **9.** I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsel for both the sides, give my decision on the above point as follows:-
- 10. The victim girl (the PW-1) has deposed that on the date of the occurrence, while she was sweeping the courtyard of their house by means of a broom, the accused came out and became naked in front of her. She then rushed towards her house and told her mother about the same. Her mother called a nearby woman connected with women's organization. The said woman advised her to file a case. Then her parents and she went to the police station and her father filed the instant case. The police asked her about the incident. She was taken to the court and her statement was recorded. Ext-1 is her said statement.
- 11. In the cross-examination, she has stated that she used to call the accused uncle (Bordeuta, meaning the elder brother of her father). She has visiting terms with the house of the accused. From the backside of their house, the accused removed his clothes and showed her his private part. He was wearing a Gamocha (Towel) and ganjee. The incident occurred at around 04:00 P.M. She was sweeping the courtyard of their house and when she looked in the direction of the accused, the accused removed his clothes. She was sweeping the front entrance of their house. The accused was standing near his toilet, on the backside of their house. He did not give any indication to her. She has denied the suggestion that the accused did nothing and she has deposed falsely as tutored by her mother.
- **12.** PW-2 Smt. Pramila Haloi, the mother of the victim girl has deposed that while the victim girl was sweeping the front entrance of their house, the accused arrived there and removed his clothes and showed her his male organ. Therefore, she has lodged the Ext-1 F.I.R. of the case against the accused person.

- 13. In the cross-examination, she has stated that the incident occurred at around 04.30 P.M. Her daughter told her about the incident and she lodged the instant case on the next day. She has also told the Secretary of the Mahila Sammittee about the incident and she told her to take decision of her own. Her husband also accompanied her to the police station. One person wrote the F.I.R. but, she does not know him. The F.I.R. was not read over to her. She did not ask the accused about the incident. She did not go to the place of occurrence.
- **14.** PW-3 Smt. Pallavi Das, the Investigating Officer is merely a formal witness of the case.
- 15. At the time of recording her testimony on 22.11.2018, the victim girl has stated her age to be 11 years. Therefore, as the alleged incident occurred on 28.03.2017, at the time of the alleged incident, she was aged about 9 years, 8 months old. She has categorically stated that while she was sweeping the front entrance of their house, the accused removed his clothes and showed his male organ to her. By cross-examining her, the defence has failed to bring out anything based on which it can be said that she was not telling the truth. Therefore, her testimony must be accepted to be true. Therefore, her testimony must be accepted to be true.
- 16. In the case of Manoj Kumar vs. The State Of Uttarakhand, reported in (2019) 5 SCC 667, the Hon'ble Supreme Court has held that:-
- "11. In the absence of any existing enmity between the accused and the witnesses there exists no ground to question the veracity of the witnesses or to raise a ground of false implication..."
- 17. In the instant case, the defence did not even suggest to the victim girl and her mother they enmity with the accused. Therefore, the question falsely implicating the accused by them does not arise.
- **18.** In view of the discussion made above, it must be held that on 23.02.2017, at around 05.00 P.M., at Bijuli Nagar, Forest Gate, Narengi, under Noonmati Police Station, the accused Bhabesh Das sexually harassed the victim girl, who, on the day of the alleged occurrence, was a child of about 9 years old,

by removing his clothes in front of her and showing her his penis, which is an offence punishable under Section 12 of the POCSO Act.

- **19.** For the purpose of this case, we may first firstly refer to Section 11 of the POCSO Act, which reads as follows:-
- **20.** "Section 11- A person is said to commit sexual harassment upon a child when such person with sexual intent, -
- (i) utter any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person."
- **21.** The scope of the provision of Section 11 crystal clear. Hence, the Section does not require further elucidation. Section 12 is the penal provision for Section 11 which reads as follows:-
- ****Section 12-** Punishment for sexual harassment Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."
- 23. In order to attract any offence under the provisions of the POCSO Act, it should be proved by the prosecution that on the date of the commission of the crime, the victim was a child. The term "child" has been defined in Section 2(d) of the POCSO Act, which states that child means any person below the age of 18 years. Thus, for the purpose of any offence under the POCSO Act, on the date of commission of the alleged crime, the age of the victim should be proved to be below 18 years. In the instant case, it can be seen from the above discussion that the victim girls, who on the day of the alleged occurrence was child under 18 years of age, withstood cross-examination. The accused did not even challenge the victim girls in the cross-examination that on the day of the alleged occurrence, she was not a child under 18 years of age. Therefore, the accused must be held guilty of committing the offence punishable under Section 12 of the POCSO Act.

- **24.** Regarding culpable mental state of the accused, Section 30 of the POSCO Act is relevant, which reads as follows:
- **25. "30. Presumption of culpable mental state.-**(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".
- In the instant case, as the accused removed his clothes and showed his male organ to the victim girl, it must be held that the accused did so with intent to sexually harass the victim girl who, on the day of the alleged occurrence, was child of about 9 years old. Therefore, his culpable mental state has to be presumed. Further, the accused did not rebut the said presumption by adducing any evidence and the evidence on record does not prove his innocence. Therefore, I hold that the accused Bhabesh Das had culpable mental state while removing his clothes and showing his male organ to the victim girl. Apart from the same, the presumption of guilt under Section 29 of the POSCO Act must also needs to be applied to the case as all the necessary facts regarding commission of the offence under the POSCO Act have been proved by the prosecution. The said presumption also has not been rebutted by the accused persons by adducing any evidence and the evidence on record does not prove his innocence.
- **27.** Failing to shake the prosecution case, the learned counsel for the accused vehemently argued that as the FIR was not filed immediately after the alleged occurrence, the prosecution case is liable to be rejected in its entirety for the delay in lodging the FIR.
- **28.** I do not agree with this contention of the learned counsel for the accused as the alleged occurrence took place on 28.03.2017, at around 05.00 P.M. and the Fir was lodged on the next day.

- 29. In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has succeeded in bringing home the charge under Section 12 of the POCSO Act against the accused Bhabesh Das beyond all reasonable. Hence, I hold the accused Bhabesh Das guilty of committing an offence punishable under Section 12 of the POCSO Act and convict him under the said Section of law. The point is decided in the affirmative, accordingly.
- **30.** As can be seen from the discussion made above, by becoming nude and exhibiting his penis to the victim girl with the intention that the victim girl should see him in nude condition and also see his penis, the accused has committed sexual harassment upon the victim girl as described in Section 11 (i) of the POCSO Act, 2012. If the accused did not do so with sexual intention, he would not have done the same at all as he could not have any other intention to become nude and exhibit his penis to the victim girl.
- **31.** In view of the fact that the crime against children has been increasing day by day and to deal with such crimes, the Parliament has to enact a special statute like the POCSO Act and the object and reasons of enacting the POCSO Act is to protect the children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Court for trial of such offences and for matters connected therewith or incidental thereto.
- 32. In the case of **State of A.P. v. BodemSundara Rao,** reported in (1995) 6 SCC 230: AIR 1996 SC 530, dealing with a case of reduction of sentence from 10 years R.I. to 4 years R.I. by the High Court in the case of rape of a girl aged between 13 and 14 years, the Hon'ble Supreme Court has observed as follows:

"In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the

measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane." The sentence was accordingly enhanced to 7 years R.I. in the said case.

- In view of the above, I do not think it proper to give the accused the benefit of the ameliorative relief as envisaged under the Probation of Offenders Act.
- **34.** Heard the convict on the question of sentence. He has pleaded leniency in awarding the punishment on the grounds that he is a first offender.
- **35.** The punishment for commission of an offence under Section 12 of the POCSO Act is imprisonment of either description for a term which may extend to three years and fine.
- **36.** In the case of **CHANDER SINGH Vs. STATE**, reported in (2016) 2 Crimes 792, in a case under Section 8 of the POCSO Act, the Hon'ble Delhi High Court has held as follows:--
- "20. Consequently, the conviction of Chander Singh is altered to one for offence defined under Section 7 and punishable under Section 8 of POCSO Act. The punishment for sexual assault prescribed under Section 8 is imprisonment for not less than 3 years which may extend up to 5 years and to pay fine as well. The conduct of Chander Singh in sexually assaulting a deaf and dumb girl who was not in a position to protect herself fully warrants maximum punishment. Consequently, the order on sentence of Chander Singh is altered and modified. Chander Singh is directed to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 10,000/- in default whereof to undergo simple imprisonment for a period of 1 month."
- **37.** But, in the instant case, the accused has not touched the victim girl and the victim girl has categorically stated in the cross-examination that the accused did not give any indication to her. Therefore, I deem it proper to punish the accused leniently.

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ORDER

- **38.** Considering the entire facts and circumstances of the case, and as the convict Bhabesh Das has undergone imprisonment for 56 days during investigation, instead of awarding any sustentative sentence of imprisonment, if the period of detention already undergone by the accused is set of against the sustentative sentence, the same will serve the ends of justice in this case., which I do accordingly. Further, the convict is directed to pay a fine of Rs. 10,000/-(Rupees ten thousands) only, in default to undergo simple imprisonment for one month, which in my considered opinion will meet the ends of justice. The fine, if realized, shall be paid to the victim girl as a token of compensation. In the facts and circumstances of the case, there is no necessity of awarding any more compensation to the victim girl. The bail bond of the convict Bhabesh Das stands cancelled. Issue Jail warrant.
- **39.** Furnish a copy of the judgment to the convict Bhabesh Das free of cost, immediately.
- **40.** Signed, sealed and delivered in the open Court on this the 30th day of October, 2019, in Guwahati.

(Shri A.Chakravarty)
Special Judge,
Kamrup (M), Guwahati

Dictated & corrected by me.

(Shri A. Chakravarty)
Special Judge,
Kamrup (M), Guwahati

APPENDIX

A.Prosecution Witnesses:

- 1. PW-1 Anita Haloi
- 2. PW-2 Pramila Haloi
- 3. PW-3 Pallavi Das

B. Prosecution Exhibits:

- 1. Ext. 1 Statement of the victim.
- 2. Ext. 2 FIR
- 3. Ext. 3 Charge-sheet

(Shri A.Chakravarty)
Special Judge
Kamrup (M),Guwahati