CAUSE TITLE POCSO Case No. 8/17

Informant: Sri Pulin Chandra Bora,

S/o- Late Rakheswar Bora,

CWC Office,

Jibon Phukan Nagar, PS- Dibrugarh, District- Dibrugarh.

Accused: Sri Sudhan Das,

S/o- Late Roghani Das,

R/o- Chiring Gaon Railway Colony,

PS- Dibrugarh, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: S Dutta, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 8/17 G.R. Case No. 489/17

> > State of Assam

-Vs-

Sri Sudhan Das

Charges: Under Section 4 of POCSO Act.

Date of evidence on : 03-04-17, 06-05-17, 06-06-17 & 05-07-17.

Date of argument : 14-11-17. Date of Judgment : 14-11-17.

JUDGMENT

- 1) The prosecution case in a nutshell is that Sri Sudhan Das (hereinafter the accused), who is the victim X's brother-in-law, sexually assaulted her. The victim X fled from the house of the accused and she was rescued by Child Line and the Probation Officer cum District Child Protection, Dibrugarh lodged an FIR with the police on 09-02-17 at Milan Nagar Outpost. After GDE at Milan Nagar Outpost vide GDE No. 232 dtd. 09-02-17, the FIR was forwarded to the Dibrugarh Police Station which was registered as Dibrugarh PS Case No. 170/17 under Sections 376 IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short).
- 2) SI Nakul Chandra Das was entrusted with the investigation and investigating officer (IO in short) embarked upon the investigation. He recorded the statements of the witnesses and forwarded the victim to the Magistrate for recording her statement under Section 164 CrPC. He also forwarded the victim to the medical officer (MO in short) for medical examination. On finding prima facie materials against the accused, the IO submitted Charge-Sheet against the accused under Section 4 of the POCSO Act.
- 3) On appearance of the accused, copies were furnished and a formal charge under Section 4 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.

4) To substantiate the stance, the prosecution adduced the evidence of six witnesses and the defence cross-examined the witnesses in extenso. Several documents were also exhibited.

POINT FOR DETERMINATION:

1. Whether the accused committed penetrative sexual assault on the victim X who was a minor at the time of the occurrence?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 5) The victim X testified as PW-1 that the complainant is not known to her and the accused person is her brother-in-law. She has been staying with her sister Sushila Devi for seven years and the accused person is Sushila Devi's husband. At the time of the incident, her sister Sushila Devi went to Bihar with her younger son and she was staying along with the accused person and his son at Dibrugarh. She also wanted to go to Bihar with her sister, but her sister did not take along with her. There was a birthday party in the nearby house and she left the gas burning to attend the birthday party. When the accused hit her for her negligence, she was enraged as the accused slapped her and she lodged a false case against the accused. This incident took place in the month of February, this year. As she was enraged, she stayed overnight in the house where the birthday party was celebrated. On the next day, she ran away from her brother-in-law's house and after she ran away, the Child Welfare Committee, Dibrugarh recovered her and had taken her into custody. Then the Child Welfare Committee lodged a case according to her narrative. The police recorded her statement and forwarded her to the Magistrate for recording her statement. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(3) are her signatures.
- 6) In her cross-examination, she stated that she has given false evidence before the Magistrate as she was not taken to Bihar. Her brother-in-law did not commit any sexual harassment or sexual assault upon her.
- 7) The victim is fifteen years old, but at the same time, she is also not so young that lying or fabricating, can be ruled out. When she has not implicated that the accused is complicit, the entire case is without a substratum and the accused cannot be fastened with the guilt of sexual assault. The statements of other witnesses also originated from the narrative of the victim. When the victim herself failed to incriminate the accused, the entire case is rendered

baseless.

- 8) Sri Pulin Chandra Bora is a Protection Officer cum District Child Protection Officer and he testified as PW-2 that on 09-02-17, he was in the office of the Child Protection Unit. On 08-02-17, he received a complaint regarding a child abuse and on 09-02-17, a meeting was held and it was decided in the meeting to lodge an ejahar against the accused. On that day, the victim X was produced and her statement was recorded by the staff. Then he lodged the ejahar as the District Child Protection Officer. Ext. 2 is the ejahar and Ext. 2(1) is his signature. The victim was given shelter in the Child Protection Home after her statement was recorded and she was handed over to her father through the order of this Court.
- 9) Assistant Registrar of Cooperative Societies, Smti. Junumoni Baruah testified as PW-3 that she met the victim for the first time in the month of February, 2017. On that night, three women brought the victim to her house and the victim was crying at that time. As the victim was weeping, the women requested her to give shelter to the victim for the night and she reluctantly provided shelter to the victim for the night. Then she informed the Childline who requested her to provide shelter to the victim for the night. The victim was very reluctant to return to her house.
- 10) The evidence of PW-2 & 3 does not at all implicate that the accused is complicit. Moreover, the evidence of PW-3 who provided shelter on the night of the alleged incident, does not depict any incident of sexual assault.
- 11) PW-4 Smtji. Ranju Chauhan testified that the alleged incident took place on 06-02-17. On that evening, the victim X came to her house and she was weeping. The victim informed her that she did not want to return to her brother-in-law's house, because he assaulted her. So she took the victim to Smti. Junumoni Baruah's house nearby and requested her to provide shelter to the victim for the night.
- 12) Smti. Manju Gupta testified as PW-5 that the accused person resides in a rented house which is near her house. The victim X is the accused person's sister-in-law. The alleged incident took place on 07-02-17. On that day, in the evening, the victim who was weeping continuously, came to her house and requested her for shelter, as her brother-in-law used to assault her in the house. As she was unable to provide shelter to the victim, she took her to the house of Smti. Junumoni Baruah.

- 13) The evidence depicts that the victim was first recovered by Smti. Ranju Chouhan and Smti. Manju Baruah and they requested Smti. Junumoni Baruah to provide shelter, but the witnesses Junumoni, Ranju and Manju did not incriminate that the accused sexually assaulted the victim. They have stated that the accused assaulted the victim.
- 14) The Protection Officer of the District Child Protection Office Smti. Madhusmita Baruah testified as PW-6 that she came to know the accused on the day of the occurrence. The complainant Sri Pulin Chandra Bora is known to her. The victim is also known to her. On 09-02-17, at about 10:30 am, during the CWC sitting, the victim X was produced before them from the Childline on receipt of information from the victim's aunt over phone. The victim who was rescued by the Childline stated before them that since four years, she has been staying with her sister and brother-in-law. She had to do all the household chores in her elder sister's house and was subjected to physical assault by her sister and her brother-in-law. During the time of the incident, her elder sister went to Bihar for about one month and the victim X was alone with the accused and his two minor children at Dibrugarh. During her stay with the accused, the victim was misbehaved by the accused who used to grope the victim inappropriately. At the time of the incident, the accused broke the bolt of the door leading to the kitchen and exerted pressure on the victim to sleep with him and when the victim refused, he assaulted her. In this manner, the accused exercised pressure to sleep with him till his wife returns from Bihar. On 06-02-17, the victim went to attend a birthday party in a neighbour's house and the accused went there and without any rhyme and reason, assaulted the victim and that night, the victim took shelter in a house belonging to her aunt. On 07-02-12, she returned to her brother-in-law's house and attended her regular household chores, but on the same evening, the accused assaulted her and the victim fled away from the house. On the way, she met an acquaintance whom she addressed as Khuri and her Khuri handed her over to the Childline. Then the DCPO lodged an ejahar with the police.
- 15) The evidence of Smti. Madhusmita Baruah depicts that the accused committed sexual harassment on the victim, but her evidence is not supported by the victim's evidence or the evidence of other witnesses. This casts a shadow of doubt over the evidence and the accused gets the benefit

of doubt, when the victim herself failed to incriminate that the accused is complicit. The benefit of doubt goes to the accused. The only evidence which convinces me is that the accused rebuked and assaulted the victim and so he is guilty of the offence under Section 352 IPC. Thereby the accused is held guilty of the offence under Section 352 IPC and he is released after due admonition.

16) Furnish free copies of judgment to the accused and to the District Magistrate.

Judgment is signed, sealed and delivered in the open Court on the 14th day of November, 2017.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Sri Pulin Chandra Bora;
- 3. PW-3 Smti. Junumoni Baruah;
- 4. PW-4 Smtji. Ranju Chauhan;
- 5. PW-5 Smti. Manju Gupta;
- 6. PW-6 Smti. Madhusmita Baruah.

List of Exhibits:

1. Ext. 1 Statement of the victim recorded under Section 164 CrPC.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.