IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 110/2018

(Arising out of Barpeta P.S. Case No. 1740/2018)

U/S 12 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:- 18.04.2019

State of Assam

- Vs -

Rehan Sikdar.....Accused

Date of Recording Evidence on – 02.07.2019 & 22.10.2019

Date of Hearing Argument on – 22.10.2019. Date of Delivering the Judgment on – 22.10.2019.

Appearance:

Advocate for the State------ Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused------ Faijur Rahman, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 20.08.2018 one Jabed Ali lodged an FIR in Barpeta P.S. alleging inter alia that his daughter (X real name with held) age about 12 years while proceeding to school and back home accused Rehan Sikdar very often subjected her torture by giving lewd and sexy signals. The matter was also informed to the head master of the school, but accused told him to marry his daughter. It is further stated that on 02.08.2019 while his daughter was proceeding to school accused restrain her by holding her hands and express to marry her and also threaten her to kill if she refuse to oblige him. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta P.S. case No. 1740/18 u/s 341/294 IPC R/W section 12 of POCSO Act and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against

accused Rehan Sikdar u/s 294/341 IPC R/W section 12 of POCSO Act with a view to stand trial.

- 4. In due course, when accused entered his appearance in court vide order dated 18.04.2019 having found a prima facie case charge u/s 12 of POCSO Act was framed against accused Rehan Sikdar. The particulars of the offence on being read over and explained accused pleaded not guilty and claim trial.
- 5. During the course of trial, the prosecution examined only 4 witnesses namely the informant Jabed Ali as PW-1, the alleged victim girl (X real name withheld) as PW-2, Rashida Begum as PW-3 and Billal Hussain as PW-4. However, considering the quality of the evidence of the star witnesses namely the informant PW-1 and his wife PW-3 and the evidence of independent witness PW-4 giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Concluding prosecution evidence accused is examined u/s 313 Cr.P.C. but he denied the prosecution evidence as false and misleading.
- 7. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. Now point for determination ;-

.1. Whether on 02.08.2018 and prior thereto accused repeatedly and consistently follows or watches or made attempts to contact the victim girl when she went to school and back home by proposing to marry her and using sound or gestures to that effect as alleged?

9. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the learned lawyers appearing for both sides and also carefully scanned the prosecution evidence available on record.

- 10. Before discussing the evidence on record it is apposite to refer section 11 and 12 as defined in the POCSO Act 2012.
- **"11. Sexual harassment**. A person is said to commit sexual harassment upon a child when such person with sexual intent -

- (i) utters any word or makes any sound, or makes any gestures 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; or
- (iii) shows any object to a child in any form or media for pronographic purpose; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purpose or gives gratification therefor.Explanation Any question which involves "sexual intent" shall be question of fact."
- **"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. "
- 11. Now, on perusal of the offence u/s 11 of POCSO Act it appears that if defines the nature of the act/acts which constitutes the offence of sexual harassment and section 12 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 11 of POCSO Act.
- 12. Here from the evidence available on record particularly the evidence of PW-3 who is the mother of the alleged victim girl and also the evidence of PW-4 who is the sole independent witness it transpires that the incident occurred about 1 year back. But the alleged filthy language and sexual comments passed by accused was not meant or addressed to the alleged victim girl, but towards the wife of accused with whom he had frequent quarrels. The PW-3 & PW-4 denied having any wrong doing by accused towards the daughter of informant. On the other hand, PW-1 who is the informant cum father of the alleged victim though stated that accused disturbed his daughter by giving lewd and sexy comments while going to school and back home. But in his cross examination PW-1 stated that accused did not disturb his daughter with ill intention. Like wise, the evidence of victim girl PW-2 shows that though accused allegedly addressed her as "Randi" and "Mugy", but in her cross examination she

depose that the case was the result of quarrel between her father and accused person.

- 13. Now, on careful assessment of evidence of all the four prosecution witnesses including the evidence of alleged victim girl it is crystal clear that the version of the alleged victim has not even been supported by her own parents namely PW-1 and PW-3. Their evidence belies the version of PW-2 regarding the authenticity of the incident.
- 14. True it is that for sustaining conviction of accused the evidence must be cogent credible and trust worthy. In the absence of any corroboration from the independent witnesses the version of the alleged victim is found to be unworthy of credit for sustaining conviction.
- 15. It is settle law that conviction can be sustained based on sole testimony of the prosecutrix provided it convinces the mind of reasonable man about the truthfulness of the version of the victim. In the present case, as it appears the evidence of alleged victim do not convince the mind of this court about the trust worthiness of the victim particularly when her own parents do not support her version.
- 16. As per section 134 of Indian Evidence Act the number of witnesses is not material but the quality of evidence counts. In the present case though prosecution examined four witnesses including the victim but the version of victim has not been supported by other three prosecution witnesses. In the absence of corroboration in material particulars it is totally unsafe to hold the accused person guilty on the basis of conjectures and surmises. The credibility of prosecution witnesses can be tested on the touch stone of truth, but in the present case as discussed above the truth appears to be far away not to speak of any corroboration in material particulars.
- 17. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Rehan Sikdar u/s 12 of POCSO Act beyond all reasonable doubt. In the result, this court has no option but to acquit the accused Rehan Sikdar from the offence u/s 12 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.
- 18. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

- 19. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 20. Let the case record be consigned to record room after completing the formalities.
- 21. Given under my hand and seal of this Court on this 22nd day of October, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 4 nos. of witnesses:-

PW-1 = Jabed Ali, the informant.

PW-2 = Marjina Khatun Khatun, the victim girl.

PW-3 = Rashida Begum

PW-4 = Billal Hussain.

2. The prosecution has exhibited the following document :-

Ext. 1 = is the FIR.

Ext. 1(1) = signature of the informant.

Ext. A = the birth certificate.

Ext. A(1) = the photocopy of birth certificate.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.