IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special 08/2018 corresponding to GR Case No.320/2018 & Bokajan Police Station Case No. 25/2018 Under Section 8 of the POCSO

Act.

State of Assam

Versus

Shri Padmeswar Boro

Name of informant/complainant:

Miss Mirbon Tissopi D/o Shri Babul Tisso Village: Koy Tisso

P.S Bakalia

District: Karbi Anglong.

Name of the accused person facing trial:

Shri Padmeswar Boro,

S/o Shri Sanjib Village: Tisso Gaon

P.S: Bakalia

District: Karbi Anglong.

Advocates appeared:

For the prosecution : Mr Dilip Kumar Deka, Public

Prosecutor

For the accused : Mr Shyamal Shil. Argument heard on : 26.9.2018.

Judgment pronounced & delivered on : 04.10.2018.

JUDGMENT

- It is a case of sexual assault alleged to have been committed by the accused, Shri Padmeswar Boro.
- 2. The prosecution case in brief is that on 28.3.2018 the informant, Miss Mirbon Tissopi lodged an ejahar with Bakalia Police Station stating inter alia that on 27.3.2018 at about 5-30 PM, she and her younger sister, Miss Irish Tissopi while coming from Longnit Bazar towards their house, the accused-Padmeswar Boro catching hold of her hand and chest did bad work(indicated sexual offense) on Longnit bridge and thereafter, he left the place. Coming to their house, she informed the matter to her mother. On receipt of the written ejahar, O/C, Bakalia Police Station registered a criminal case vide Bakalia Police Station Case No.25/2018 U/S 8 of the POCSO Act. On completion of the investigation, charge-sheet was submitted Sec.8 of the POCSO Act against the accused person. Hence the prosecution case.
- 3. On completion of appearance of the accused person before this Court, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, I have found sufficient grounds for presuming that the accused person had committed the offence U/S 8 of the POCSO Act and accordingly, the charge was framed. The particular of the offence charge was duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 4. During trial, Prosecution has examined as many as 10 (ten) witnesses including the informant-cum-alleged victim. Accused person has been

examined under section 313 of Cr.P.C. Defense examined none. Plea of defence is of total denial.

5. **Point for determination**

Whether the accused person, Shri Padmeswar Boro on 27.3.2018 at about 5-30 PM on the bridge of the road connecting Longnit Bazar under Bakalia Police Station committed sexual assault upon the victim, Miss Mirbon Tissopi aged about 14 years and that you thereby committed an offense punishable U/S 8 of the POCSO Act?

6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting submission. the aforesaid learned **Public** Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

7. PW-1 is Smti. Sika Engtipi who has stated in her evidence that the informant-cum-victim is her daughter. The incident occurred on 23rd March of this year. On that day at about 5 O' Clock in the evening, her daughter, Mirbon and another daughter came home back weeping from Longnit Bazar. On being asked, Mirbon told her that accused hugged her from back side and touched her chest. She informed the matter to the villagers. She knows the accused since long as he belongs to the same village. On the subsequent

day, her daughter lodged an ejahar at Bakalia Police Station. Police seized a birth certificate from their house and she put her signature in the seizure list. Ext.1 is the seizure list and Ext.1(1) is her signature. Police brought her daughter to Diphu Civil Hospital and got her statement recorded in the Court. At the time of occurrence, age of the victim girl was 14 years.

- 8. PW-2 is the informant-cum-victim who has stated in her testimony that she knows the accused. On 27.3.2018 at about 5-30 PM while she was coming from market along with her 6 years old sister, on her arrival at the bridge, the accused suddenly hugged her from behind and touched her chest (breasts). On being looked back, the accused left the place. There was no house near the place of occurrence. Ext.2 is the ejahar and Ext.2(1) is her signature. Police got her medically examined and her statement recorded in the Court. Ext.3 is her statement and Ext.3(1) is her signature. At the time of occurrence, she was 13 years and 6 months old.
- 9. PW-3, Smti. Kadom Terangpi is a hearsay witness. She heard the occurrence from the mother of the victim. She also heard that people of their village had beaten the accused. On being asked, the victim herself told her that the accused hugged her from behind on the bridge at Longnit and touched her chest.
- 10. PW-4 is Miss Jyotsna Tissopi is the elder sister of the victim. According to her version, the occurrence took place on 27th March of this year. On day of occurrence at 5-30 PM, her aunty informed her that while the victim was coming home back, in the evening hours, the accused

hugged her from behind and touched her chest on the bridge of Longnit. At the time of incident, the victim was 14 years old. On the day of the occurrence, the victim came to Bokalia Police Station and lodged the written ejahar there. She and her mother went to the police station along with the victim.

- PW-5 is Shri Sikari Tisso who has stated that 11. the informant is his daughter. He knows the accused. The incident occurred on 27.3.2018 at about 5-30 PM. At the time of occurrence, he was staying at home. At that time, people of their village informed him that while the informant was coming from Longnit Bazar, the accused hugged her from behind on the bridge of Longnit. At the time of occurrence, his younger daughter-Miss Irish Tissopi was with his victim-daughter. Thereafter, some villagers went to Bakalia Police Station along with the victim and lodged the ejahar. At the time of incident, victim was 14 years old. Police brought the victim to Diphu Civil Hospital for medical examination and the Court recorded her statement.
- 12. PW-6 is Miss Irish Tissopi who has stated in her evidence she saw the accused touching the breast of her sister, Mirbon Tissopi from behind.
- 13. PW-7 is Dr Jecqueline Teronpi who has deposed that on 28.3.2018 while she was discharging her duty as SDM&HO at Diphu Civil Hospital, she examined Smti. Mirbon Tissopi in connection with Bakalia Police Station Case No. 25/2018 and on examination, she found the age of the victim as 13 to 14 years which was based on radiologist's report. She found no external injury on her and during the time of

- examination, she was having her menstruation. She found hymen absent. Ext.4 is the medical report and Ext.4(1) and 4(2) are her signatures.
- 14. PW-8 is Shri Rensing Tisso who has stated his evidence that the informant-victim is his niece. He knows the accused person. The incident occurred on 27.3.2018. On the day of occurrence at about 5-30 PM, the informant took him along with her while she was going to police station. Other people were also present with her. On being asked about the occurrence, the victim informed him that on the way to her house from Longnit Bazar, the accused hugged her from behind, touched her chest and kissed her on the bridge. Village people nabbed the accused. Police came and the villagers handed the accused over to police. Police seized one birth certificate from the custody of the informant. Ext.1 is that seizure list and Ext.1(2) is his signature. At the time of occurrence, the victim was about 10 years old.
- 15. PW-9 is Smti. Jyotika Bora who has stated in her deposition that on 28.3.2018 she was discharging her duty at Bakalia Police Station. On that day, one girl by name Nirbon Tissopi came to their police station and lodged an ejahar. She recorded the statement of informant-victim, Nirbon Tissopi. She recorded the facts as victim told to her.
- 16. PW-10 is Shri Kulesh Jyoti Bhuyan who is the I.O. of this case. He has stated in his evidence that on the day of occurrence, he was working as O/C of Bakalia Police Station and he himself took up the charge of investigation. On completion of procedural works of investigation, he submitted charge-sheet U/S 8 of the POCSO Act against the

- accused person. Ext.6 is charge-sheet and Ext.6(1) is his signature. He seized school certificate of victim. Ext.1 is the said certificate and Ext.1(3) is his signature. M.Ext.1 is school certificate and M.Ext.1(1) is the signature of the Principal of that school.
- 17. For attracting the provisions of the POCSO Act the victim needs to a child. According to section 2(d) of the Act, any person who has not completed 18 years is called child. Ext-1 is the seizure which shows that a birth certificate of the victim where in her date of birth has been recorded as 28-05-2004. PW-1 and PW-5 are the parents of the victim who have stated in their evidence that at the time of occurrence she was 14 years old. PW-4 is the sister of the victim who has also stated that the victim was 14 years. Parents are the best persons who can say actual age of their child. PW-7 is the medical officer and her evidence shows that as per radiologist at the time of occurrence, the victim was 13/14 years old. According to the victim, at the time of occurrence she was 13 years 6 months. M-Ext-1 shows that at the time of occurrence the victim was below 14 years. The defence has not disputed that evidence of aforesaid PWs regarding age of the victim at the time of occurrence. Now I have come to conclusion that at the time of occurrence, the victim was not more than 14 years. Accordingly it is held that at the time of occurrence, the victim was child.
- 18. Fact of the case remains that at the time of occurrence, the victim along with her 7 years old sister was coming home back from Bazar and that occurrence took place in a lonely place on bridge. According to the victim, the accused coming from

back side suddenly caught hold of her from backside and pressed her breasts. Her aforesaid sister has also stated that the accused pressed the breasts of the victim.

- 19. It is found that immediate after occurrence, the victim went to the house crying and informed her mother about the occurrence. On the following day she lodged the FIR at Bokalia Police Station. Other prosecution witnesses have also supported the prosecution case.
- 20. Regarding credibility of the child witness it has been observed by Hon'ble Apex Court in the case law of Raj Kumar V State of MP reported in " (2014) 5 SCC 353" thus:-" Evidence of child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him." Similarly the Hon'ble Apex Court has also observed in case of Alagupandi V State of TN reported in " (2012) 10 SCC 451" thus:-" While assessing evidence of child witness, court must carefully observe his/her demeanour to eliminate likelihood of tutoring. Conviction can be allowed to stand without any corroboration but as a rule of prudence it is always desirable to seek corroboration of such evidence from other reliable evidence on record.
- 21. In this regard I would like to refer to the case of Narender Kumar v. State (NCT of Delhi) reported in " (2012) 7 SCC 171" and its relevant paragraph is re-produced below:-"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the

prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case."

- 22. There is a no contradiction in the evidence of victim. It is evident that the victim immediate after occurrence went to the house crying and informed her mother. There is also no evidence on record showing that there is/was any enmity between the accused and any member of the victim's family. In Indian society normally woman or any child like the victim dislikes to disclose any sexual assault inflicted upon them to others out of shame or fear. I find no way to believe that the victim and her younger sister who was with her at the time of occurrence deposed false. In view of the discussion and observations made in the aforesaid case laws I find the evidence of victim marked as PW-2 as well as her younger sister marked as PW-6 reliable and trust-worthy.
- 23. Sexual assault is defined under section 7 of the POCSO Act which reads thus "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact

without penetration is said to commit sexual assault."

- 24. Ext-3 is statement of the victim which shows that the accused touched her breasts and hugged her keeping his hands around her neck. It is evident that the accused person touched her breast or did some act with sexual intention. I find the acts done by the accused person towards the victim fall within preview of the sexual assault as defined under section 7 of the POCSO Act.
- 25. Section 8 of the POCSO Act relates to punishment in respect of sexual assault as defined under section 7 of the POCSO Act which reads thus "Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine"
- 26. I find the prosecution has succeeded to prove its case against the accused person under section 7 of the POSCO Act.

ORDER

- 27. In the result I find the accused person guilty under section 8 of the POCSO Act and accordingly he is convicted.
- and to that effect his statement is recorded. Accused has stated before the court that he is the only earning member of his family consisting of his wife, 1 ½ year old daughter and old parents. He has also prayed for leniency in sentencing him. Learned advocated appearing on behalf of the accused person has submitted that accused is a poor person and that there is no evidence on record showing that he was previously convicted

by the court of law and as such he deserves to be punished leniently. On the other hand learned Public Prosecutor Mr. Dilip Kumar Deka has submitted that the accused needs to be punished exemplary to make the desire of the legislature fulfilled.

29. Regarding object of the POCSO Act, the Hon'ble Apex has observed in case of *Eera v.* State (NCT of Delhi) reported in "(2017) 15 SCC 133" thus :-"20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POSCO Act."

- 30. Having regards to discussion made above as well as observations made in the case law cited above I do hereby order the accused person to suffer RI of 3 years and to pay fine of Rs. 500/- i/d SI of 1(One) Month. Accordingly case is disposed of on contest. No order for recommending award of compensation to be paid to the victim is passed.
- 31. Given under my hand and seal of the Court on this 04th October, 2018 at Diphu, Karbi Anglong.

Dictated and Corrected by me

(Md. A.U.Ahmed, AJS)
Special Judge

(Md. A.U.Ahmed, AJS)
Special Judge

APPENDIX

Prosecution Witnesses.

PW-1 Smt. Sika Engtipi

PW-2 Victim Girl

PW-3 Smt. Kadom Terangpi

PW-4 Miss Jyotsna Tissopi

PW-5 is Shri Sikari Tisso

PW-6 is Miss Irisih Tissopi

PW-7 is Dr. Jecqueline Teronpi

PW-8 is Rensing Tisso

PW-9 is Smt. Jyotika Bora

PW-10 is Shri Kulesh Jyoti Bhyuan.

Prosecution Exhibited

Ext-1 is seizure list

M-Ext-1 is the seized School certificate.

Defence Witnesses : Nil Defence Exhibited: Nil

(Md. A.U.Ahmed, AJS)
Special Judge