IN THE COURT OF THE SESSIONS JUDGE: : KAMRUP: : AMINGAON

District: Kamrup, Amingaon

Present: A.F.A. Bora

Special Judge, Kamrup, Amingaon

Special Sessions Case No.5/2014

Under section 451 IPC R/W Section 8 of the Protection Of Children from Sexual Offences Act, 2012

State of Assam

-Versus-

Sri Aradhan Mandal

S/o- Sri Palan Mandal

Vill- Howlitary

P.S- Boko

Dist- Kamrup, Assam Accused

Appearance:

Smt. P. Deka, Public Prosecutor.....For the State

Mr. A. Rahim & Mr. M.H. Barbhuyan and Ms. S.Sultana

Advocates for the accused.

Date of charge- 23-09-2014

Date of evidence- 06-06-2015, 23-03-2015, 28-06-2016

13-07-2016, 20-05-2017

Date of Argument: - 20.04.2018

Date of Judgment: - 07.05.2018

JUDGMENT

- 1) The fact of the case briefly narrating is that on 18-07-2014 at 8-30 A.M. one Sri Palan Mandal lodged FIR at Chamaria Police Outpost under P.S. Boko against three persons, namely, Aradhan Mandal, Bhogirath Mandal and Norottam Mandal alleging inter-alia that on 04-07-2014 at around 5 P.M. the grand- daughter of the informant (prosecutrix) was alone in the house. It is alleged that taking advantage of the absence of other family members, the person, namely, Aradhan Mandal came to their house and offered Rs. 10/- to his grand-daughter with a bad intention which the prosecutrix refused to accept. Thereafter, said Aradhan Mandal allegedly caught hold on the hand of the prosecutrix and when she made hue and cry, the mother of the prosecutrix appeared there and immediately Aradhan Mandal fled away. It is further alleged that for the above act, the guardian of Aradhan Mandal gave them assurance that they will settle the dispute and ultimately on 16-07-2014 at 9-30 A.M. there was a village Mel in the house of one Nilamoni Mandal which ended without outcome.
- 2) The aforesaid FIR was registered as Boko P.S. Case No. 448 IPC R/W section 8 of the Protection of Children from Sexual Offences Act, 2012 (here-in-after referred as POCSO Act).
- 3) Police investigated into the matter. The victim was produced before a Magistrate for recording her statement and she was medically examined. After completion of investigation police submitted charge sheet against said Aradhan Mandal (here-in-after called the accused) u/s 448 IPC R/W 8 of the POCSO Act.
- 4) Accordingly, on receipt of record this Court after hearing both the parties, framed charges u/s 451 of IPC R/W section 8 of the POCSO Act. The accused appeared and denied the charges. Thereafter, prosecution examined altogether 6 witnesses whereas the defence examined one witness as D.W. taking the plea that there was an altercation and quarrel

between the father of the prosecutrix and the accused for taking away of one watermelon paying cost of Rs. 10/- to the daughter of the said Aradhan Mandal. The defence further made an attempt to substantiate the fact that there was a quarrel between the accused and the father of the prosecutrix having some monetary transaction and there an altercation took place between them.

5) Having such allegation and counter allegation, it is necessary to determine the dispute on the basis of available evidence on record.

5) **POINT FOR DETERMINATION**

- (i) Whether the accused person on 04-07-2014 around 6 P.M. committed house trespass by entering into the dwelling house of informant Palan Mandal situated at Howlitari village with intent to commit an offence punishable u/s 451 of IPC?
- (ii) Whether the accused person on the same date, time and place after committing house trespass touched the body of the victim and asked her to put off her clothes with sexual intent and offerned her Rs. 10/- and thereby committed an offence of sexual assault on the prosecutrix, a girl of nine years old u/s 7 punishable u/s 8 of the POCSO Act?

DISCUSSION AND REASONS THEREOF:

- 6) Heard both sides. Perused the record. The oral testimony of the witnesses are discussed one by one to test the veracity of the prosecution case.
- 7) P.W. 1 is the prosecutrix. According to her occurrence took place on 04.07.2014 at about 6-30 P.M. in their house. According to her she was alone in the house and at that time accused came and asked her to play

with him, then she replied that what I will play with you. According to her accused asked her to remove her pant and said that then he will show. P.W. 1 deposed that she refused him, then he gave her Rs. 3/- which she refused to taken from the accused. She further stated that then accused caught hold her hand and then prosecutrix screamed and ran away. According to version of P.W. 1 her aunt Rangmala asked her what happened, then she told the incident to her. She again stated that at that time her mother was not at her home and on arrival she told about the incident to her mother, father and grand-father too. The testimony of P.W. 1 reveals further that after the incident there was some offer from the villagers to settle the matter, but it has not happened and thereafter, the grand- father of the prosecutrix lodged a case after 12 days of the incident. She further testified Ext. 1 as her statement recorded before the Court and Ext. 1(1) as her signature and she further claimed that she was studing in class V at the time of incident.

8) In cross she admitted that she knows the accused since long as her father and accused worked together as carpenter. She further admitted that the accused used to visit their house frequently prior to the incident. She admitted that on her screaming her aunt Rangmola came before her mother and the accused came to their house on a bicycle. She admitted that she has not stated before police that accused came to their house by bicycle on the date of occurrence. She admitted that her grand-father stayed at a little distance from their house. She admitted that when she raised scream, her grand-father did not come at that time, but on the same day he came to their house. She admitted that before the incident the accused normally used to love her and before the day of incident, he never offered her any money. She admitted that there was no dispute or enmity between her father and the accused. The defence put suggestion that the accused did not offer her rupees three and he did not ask her to remove her pant which is denied by P.W. 1. The defence put suggestion that she did not disclose about the incident to her parents, grand-father and khuri which is denied by P.W.1.

- 9) P.W. 2 Palan Mandal is the informant of this case. According to him he lodged this case against three accused persons and he knows the present accused. According to him one Das from our village had written the ejahar upon his instruction and upon being read over to him, he put his signature thereon. He stated that he lodged the ejahar some days after the incident and he did not remember the date of the incident, but the incident had taken place about one year back, in the evening at around 6 P.M. He stated the same story as stated by P.W. 1. He stated that when he reached home, the prosecutrix narrated the incident to him. He stated that at that time the father of the prosecutrix was not home and he informed the father of the prosecutrix and the father of the prosecutrix came home and the prosecutrix narrated the incident to her father also. He stated that he informed the matter to the father of the accused and he assured him to settle the matter. According to him sometime passed without any settlement and one Bhagirath Mandal took the responsibility and accordingly a meeting was held in the house of Nilomoni Mandal and he along with Bhagirath Mandal, accused, Haran Mandal, Sanaton and Balen were present in the said meeting. According to him the accused confessed his guilt before the people gathered in the meeting. According to him there was some commotion in the meeting and the accused was assaulted by some of the persons. He stated that after the meeting, Bhagirath Mandal, Narottam Mandal and Sanatan prepared some papers and upon my asking, they said that he would not understand and later, they lodged a false case upon his son Haran Mandal. According to him on the next day, he came to the police station along with the prosecutrix and lodged a case on the accused persons.
- 10) In cross he admitted that he did not remember the exact date of incident. He admitted that his house is located nearby the house of his grand-daughter and there was one house in between. He admitted that he heard about the incident on the day of the incident itself from the proscutrix and at the time of incident he was at his home. He admitted that he was that the place of occurrence immediately after the incident, after hearing the scream of the proscutrix, but at that time he did not see the accused

Aradhan. He admitted that by normal walking, it takes about 10 minutes to reach the house of the prosecutrix from his house, but on the day of incident he came running and reached her house. He admitted that the mother of the prosecutrix reached at the place of occurrence before he reached. He admitted that he first heard about the incident from the mouth of the prosecutrix. He admitted that on the day of incident, the father of the proscutrix was not home and he was at Guwahati. He was informed about the incident on the next day, but he came after a week. He admitted that the ejahar was lodged about more than a month after the incident and there was a delay in lodging the ejahar due to the aforesaid settlement. He admitted that he did not remember as to whether the said reason was stated in the ejahar. He admitted that he did not ask his son about lodging the ejahar. He admitted that he lodged the ejahar himself as the prosecutrix was his grand-daughter and on the day of lodging the ejahar, his son was also at home. He admitted that there was no written records of the meeting held in the house of Nilomoni Mandal regarding settlement of the incident. He admitted that when he went to police station he did not take others persons present in the meeting. He admitted that prior to the incident, his son Haran and accused used to work at Guwahati. He admitted that he did not know of any manner monetary dispute between them. He admitted that accused used to visit the house of the prosecutrix prior to the incident. He admitted that he did not know whether the accused used to offer her small amount of money to the prosecutrix.

11) P.W. 3 Rongmala Mandal is the co-villager. According to her the incident took place on 04-07-2011 at around 6 P.M. and her house is adjacent to the house of the prosecutrix. According to her on the day of incident, the accused Aradhan Mandal came to the house of the prosecutrix on a bicycle and asked her whether she had cooked food and she replied in negative. She stated that the accused left his bicycle on the verandah of her house and went to the house of the prosecutrix and she saw it. She stated that in the house of the prosecutrix, he gave prosecutrix Rs. 10/- and asked her to remove her pant, but the prosecutrix neither took the

money nor removed her pant. According to her the accused wanted to do bad act with the prosecutrix. According to her upon hearing the scream of the prosecutrix, she hurriedly came to the house of the prosecutrix with her baby and at that time the mother of the prosecutrix also arrived. She stated that the prosecutrix narrated the incident to them and in the meantime, the accused took his bicycle from her house and went away. She stated that after lodging of the case by the grand-father of the prosecutrix, police came and examined her.

- 12) In cross she admitted that the prosecutrix is the daughter of his elder brother in law. She admitted that the house of the prosecutrix and their house are adjacent. She admitted that upon hearing the scream of the proscutrix she came out of her house and saw the prosecutrix screaming on the varenda of her house and saw the accused going away from her house. She admitted that in the meantime, the mother of the prosecutrix came to the place of occurrence and thereafter, she also went near to the prosecutrix. She admitted that she stated before the police that as her baby was with her, she did not go to the place of occurrence at the time of incident, but she went there immediately thereafter. She admitted that she had not seen the accused giving Rs. 10/- to the prosecutrix, but she heard about if from the prosecutrix. She admitted that she did not know whether Haran Mandal did not want to lodge the case against the accused, but she knew that the informant lodged the case. She admitted that she did not know whether the informant demanded Rs. 50,000/from the accused regarding the case.
- 13) P.W. 4 is Dr. Dibyajyoti Knowar. According to him on 17-07-2014 he was at Chamaria State Dispensary and on that day he examined the prosecutrix, aged 9 years and after examining her, no injury was found on her body. He testified Ext. 2 as the medical report and Ext. 2(1) as his signature. During cross, he admitted that during examination he did not find any abnormality.
- 14) P.W. Rana Dutta is a Judicial Magistrate. According to him on 18-07-2014 he was working as JMFC, Kamrup, Amingaon and on that day the

prosecutrix was produced before him by police for recording her statement u/s 164 Cr.P.C. in connection with Boko P.S. Case No. 448/2014 and accordingly, after asking some preliminary questions, he recorded her statement u/s 164 Cr.P.C as per due procedure of law as stated by her. He testified Ext. 1 as the said statement and Ext. 1(2) as his signature.

15) P.W. 6 is Vikram Basumatary. According to him on 17-07-2014 he was posted as I/C Chamaria Petrol Post and on that day one Sri Palan Mandal lodged an ejahar on the basis of which Chamaria OP GD No. 247 of the same date was made and forwarded to the O/C Boko P.S. whereupon Boko P.S. Case No. 448/14 was registered. According to him the thumb impression of the informant is seen in the ejahar. He testified Ext. 4 as the extract copy of GD entry and Ext. 4(1) as his signature. According to him he made the GD entry and forwarded it to the Boko P.S. and he started preliminary investigation on the basis of the said GD entry. According to him he examined the complainant in the police station and recorded his statement. He stated that he went to the place of occurrence where he drew the sketch map of the same. He testified Ext. 6 as the sketch map and Ext. 6(1) as his signature. According to him he examined other witnesses at the place of occurrence and recorded their statements. According to him after registration of the case he was endorsed by the O/C to continue investigation of the case. According to him, he forwarded the victim girl for medical examination and also forwarded the victim girl to the Court for recording her statement u/s 164 Cr.P.C. He stated that he collected the medical report and the statement. He testified Ext. 8 as the forwarding for recording the statement of the victim girl and Ext. 8(1) as his signature. According to him on 18.07.2014 the accused appeared before the Police station whereupon he was interrogated and arrested and forwarded to the Court on the next date. According to him upon completion of investigation, he submitted charge sheet against the accused u/s 448 R/W section 8 of the POCSO Act. He testified Ext. 7 as the charge sheet and Ext. 7(1) as his signature.

- 16) In cross he admitted that there was no boundary wall around the house of the prosecutrix and the house was a thatched house. He admitted that the house of the informant is adjacent to the house of the prosecutrix. He admitted that the statement of the wife of Paran Mandal did not mention that he was at home at the time of incident. He admitted that in the statement of the accused, the accused did not mention about any amount of Rs. 3 and Rs. 10/- stated to be offered by the accused to the prosecutrix as stated by her. He admitted that he had not collected any document regarding the age of the prosecutrix. He admitted that he found her by physical appearance to be tender age. He admitted that he started preliminary investigation after making of GD entry No. 247 dated 17.07.2014 and he did not send any notice u/s 41 of Cr.P.C. to the accused for making of GD entry. He admitted that it is mentioned in the ejahar that due to village Vichar there was delay in lodging the ejahar.
- 17) With the evidence as discussed in the forgoing para, it appears that the prosecutrix claimed that she has been offered Rs. 3 by the accused when the accused gave a proposal for removing the pant of the victim which P.W. 1 refused to take from the accused. If we look into the testimony of P.W. 2, the grand-father of the prosecutrix, it appears that during cross examination he clearly admitted that at the time of incident father of the prosecutrix was not at home and he was at Guwahati who came to his house after one week and the FIR was lodged after one month of the incident. As such from the admission made by P.W. 2 it appears that he is the first person appearing in the house of the prosecutrix after the incident to whom the incident was reported by the prosecutrix and he further admitted that he could not say whether accused used to offer any amount of money to the prosecutrix. Hence the offering of Rs. 3/- by the accused is not found corroborated from the version of P.W.2. On the other hand P.W. 3, co-villager made a contradictory statement stating that accused offered Rs. 10/- to the prosecutrix and asked her to remove her pant. She stated further that immediately after the incident she went there and incident was explained to her by the prosecutrix. As such offering of Rs. 3/- and Rs. 10/- became confusion and cannot be taken

- safely. As P.W. 3 has admitted that she had not seen offering Rs. 10/- to the prosecutrix by the accused. In such a way the prosecution case became doubtful whether any money was offered by the accused giving a proposal for any indecent act.
- 18) Moreover, there is an allegation from the prosecutrix alone that accused caught hold of her hand, then she cried and accused fled away. But neither P.W. 2 nor P.W. 3 who claimed to have appeared at the place of occurrence immediately after the incident had seen accused caught hold on the hand of the prosecutrix. As per opinion of the doctor P.W. 4, he determined the age as nine years vide Ext. 2 and no contradictory view was established by the defence, but there is no such evidence from the Medical Officer that he detected any injury or abnormality upon the victim.
- 19) As such in a given situation it is not safe to rely on P.W. 1 that accused caused any physical contact upon her by holding her hand.
- 20) On the other hand the defence examined one witness namely, Sontosh Biswas who is a witness from the locality. According to him he is a passerby and chance witness. When he heard that there was a guarrel in the house of Haran @ Aran Mandal where accused was taking away one watermelon paying cost of Rs. 10/- to the prosecutrix. He narrated a complete different story stating that the daughter of Haran Mandal refused to take money from the accused and he came to know that accused took away the watermelon from the house, the father of the prosecutrix. He again stated that in the evening the accused called him to the house that he should accompany him to the house of said Aran @ Haran Mandal where accused made a demand of Rs. 1200/- from the father of the prosecutrix Haran Mandal which was due to him and the father of the prosecutrix refused the demand and there was an altercation between them. According to him he had to pay Rs. 600- only and the said altercation was intervened by D.W. 1. According to him after 4 days of the incident there was again a quarrel between them and he did not know what had happened thereafter. The prosecution cross examined this

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witness, but has failed to rebut his testimony by putting any suitable story to impeach his credibility as a witness. It appears to me that a person from the same locality will not give such evidence in favour of another co-villager without any malice or interest. No such circumstance has been established by the defence to hold a view that D.W. 1 made a concocted story for any legal gain etc. As such it appears that since there is a quarrel between the accused and the father of the prosecutrix and as admitted by the grand-father of the prosecutrix while cross examined by the defence that a village Mel was held and in that Mel accused was assaulted by some of the persons and some members in the meeting prepared papers and told P.W. 2 that they will lodge a false case upon his son Haran Mandal for assaulting the accused and on the following day only the informant came to the police station and lodged the present case.

- 21) In the prevailing circumstances, it is very much apparent that there is a dispute between the father of the prosecutirx and the accused having monetary transaction as stated by D.W. 1 who is not a interested witness of any of the party. Moreover, the delay in lodging FIR making some discussion with the villagers for settlement of the dispute etc. is not found satisfactory for the reason of lodging the FIR after 12 days of the incident that too after having a quarrel and cross fighting with the accused in the village meeting. Hence, the lodging of FIR by the grand-father of the prosecutrix after delay of 12 days is not found satisfactory regarding delay of lodging of FIR which appears fatal for the prosecution case.
- 22) Moreover, no explanation has been found from the record for nonexamination of parents of the prosecutrix as a witness by prosecution who could have better explained the happenings which took place as alleged by the grand-father of the prosecutrix.
- 23) In such a case it cannot be said that accused made any attempt for committing the offence of sexual assault other by touching vagina, penis, anus or breast of the prosecutrix of those any other act with sexual intention etc. which involved physical contact without penetration. The touching on the hand of the prosecutrix is also doubtful and no conclusion

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for that it cannot said that accused made any physical contact with sexual intention.

24) In the result, I am constrained to hold a view for the reasons as discussed in the forgoing para that prosecution has failed to prove this case beyond all reasonable doubt. Accordingly the accused is acquitted of the charges u/s 451 IPC R/W section 8 of the POCSO Act.

Bail bond executed by the accused person and surety are extended for next six months as per provisions of section 437(A) of Cr.P.C.

A copy of this order and judgment shall be sent to the District Magistrate, Kamrup, Amingaon in compliance with section 365 Cr.P.C.

Given under my hand and seal of this Court on this 7th day of May, 2018

Special Judge Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

Typed by Stenographer B.Bhattacharjya.

Appendix

Prosecution witnesses:

- P.W. 1- Prosecutrix
- P.W. 2- Palan Mandal
- P.W. 3- Rongmala Mandal
- P.W. 4- Dr. Dibyajyoti Konwar
- P.W. 5 Sri Rana Dutta
- P.W. 6- Sri Vikram Basumatary

Defence witnesses:

D.W. 1- Sri Santosh Biswas

Prosecution Exihibits

- Ext. 1-Statement of the victim girl
- Ext. 2- Medical report
- Ext. 3- FIR
- Ext. 4 –Extract copy of GR entry No. 247 dated 17.07.14.
- Ext. 5- Printed form of FIR
- Ext. 6- Forwarding for recording the statement
- Ext. 7 Charge sheet
- Ext. 8-

Special Judge Kamrup, Amingaon