CAUSE TITLE POCSO Case No. 11/17

Informant: Sri Piku Keot,

S/o- Late Paga Keot,

R/o- Purana Line, Tiniali Tea Estate,

PS- Tingkhong, District- Dibrugarh.

Accused: Sri Madhurjya Gogoi,

S/o- Sri Puna Gogoi,

R/o- Sologuri Tipomia Gaon,

PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Sri U Borah, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 11/17 G.R. Case No. 867/17

> > State of Assam

-Vs-

Sri Madhurjya Gogoi

Charges: Under Section 8 of the POCSO Act.

Date of evidence on : 29-06-17, 07-08-17, 08-08-17 & 19-09-17.

Date of argument : 14-11-17. Date of Judgment : 28-11-17.

JUDGMENT

- 1) The victim X is a student of Class-V of the primary school of the Tiniali Tea Estate Purana Line. On 14-03-17, at about 11:00 am, Sri Madhurjya Gogoi (hereinafter the accused) who was painting the walls of the school, misbehaved with the victim. The victim was alone in the room when the accused groped her in an inappropriate way. The victim who was in tears, returned home and informed her father about the incident. He lodged an ejahar with the police at Tingkhong Police Station which was registered as Tingkhong PS Case No. 36/17 under Section 8 of the Protection of Children From Sexual Offices Act, 2012 (POCSO Act in short). The investigating officer (IO in short) embarked upon the investigation and forwarded the victim for medical examination. She was also forwarded to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). The IO went to the place of occurrence and prepared the Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, he submitted the Charge-Sheet against the accused under Section 8 of the POCSO Act.
- 2) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 8 of the POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and

- claimed innocence.
- 3) To substantiate the stance, the prosecution adduced the evidence of seven witnesses including the medical officer (MO in short) and the IO. The prosecution also exhibited several documents, whereas the defence crossexamined the witnesses in extenso to refute the charges.

POINT FOR DETERMINATION:

I. Whether the accused committed sexual assault on the minor victim 'X'?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 4) To decide the case in its right prospective, it is necessary to delve into the evidence.
- 5) The victim X testified as PW-1 that she saw the accused for the first time when he came to apply paint in their school building at the time of the incident which took place in this year. At the time of recreation, her teacher asked her to fetch tea and she offered tea and was waiting on the verandah and the other children were playing in the field. At that time, the accused was inside the room chatting with someone on the mobile. The accused called her inside and thinking that the accused wanted to tell her something, she went inside, but the accused groped her breasts. She tried to escape from the accused and ran away, but the accused caught hold of her hand and as she tried to escape, she fell down and she then went home in tears. She did not meet her mother and went to her khuri's house and informed her khuri about the incident. Thereafter, she and her khuri went to the school. Her khuri's name is Moni Karmakar. Her teacher was informed about the incident. Thereafter, she returned home and informed her parents about the incident. On the following day, she and her father went to the police station. The police recorded her statement and forwarded her to the Magistrate for recording her statement and to the doctor for medical examination. Ext. 1 is her statement before the Magistrate and Ext. 1(1) to Ext. 1(3) are her signatures. Her evidence is consistent to her statement before the Magistrate under Section 164 CrPC.
- 6) The victim's evidence is corroborated by the evidence of her father Sri Piku Keot who testified as PW-2 that the incident took place about a few months ago. His daughter was a student of Tiniali LP School and she was about thirteen years at the time of the incident. In the evening, when he returned

- home, his daughter informed him that the accused who was painting in the school, groped her breasts. His daughter was thirteen years at the time of the incident. He informed an AATTSA member who advised him to lodge this case. On the following day, he along with his daughter and the AATTSA member went to the police station. One AATTSA member wrote the ejahar according to his narrative which was lodged to the police. Ext. 1 is the ejahar.
- 7) The evidence of PW-1 & 2 is corroborated by the evidence of PW-3. Smti. Bonti Borgohain is a teacher and she testified as PW-3 that the accused was employed in the month of March, 2017 to paint the walls of their school before the commencement of 'Gun Utsav'. The victim is a student of Class-V and the informant Sri Piku Keot is her father. On the following day of the Holi, due to 'Bagan Bandh', only nine students attended the school and two teachers were present in the school. She and another teacher Sri Diganta Borkakoti and other teachers were on training. The accused was present along with another boy who was helping them with the 'Gun Utsav' activities. At the time of recreation, X brought tea for the teachers and she served the tea and went out. While they were having tea and the other children were playing, the accused received a phone call on his mobile and he went out to answer the call. After two minutes, the accused returned after answering the call. Thereafter, X who was crying, went out of the school and the Assistant Teacher informed her that X was crying. When they called X, she did not answer, but kept on crying and she went away to her house. After some time, a crowd of twenty people who were creating a commotion, approached their school, accompanied by the victim. When she asked the victim 'X' the reason behind the commotion, then the victim informed her that the accused groped her breasts when he went out to attend the call on his mobile. The local people suggested sending away the accused and so the accused was sent away and never called to their school. On the next day, many people from different organizations came to their school and an ejahar was lodged with the police. She went to the police station and the police recorded her statement. Thus, it is clear that after serving tea to the teachers, the victim went out and then the accused received a phone call and while he came out to answer the call, he molested the victim and groped her breasts.
- 8) The victim's father was informed about the incident and he informed the AATTSA member who wrote the ejahar for him. PW-3's evidence clearly

reveals that the accused went out to answer the call. It can be deduced from the evidence that when the accused went out to answer the call, he molested the victim in private. He went out of the room where PW-3, 4 and other teachers were present. It can also be deduced from the evidence that not many children were present on the day of the incident, because it was the next day of Holi. The evidence of PW-3 & 4 clearly depicts that the accused was employed to paint the walls before the commencement of 'Gun Utsav' festival.

- 9) In sync with the evidence of PW-3, Sri Diganta Borkakoti testified as PW-4 that the accused was employed to paint the walls before the commencement of 'Gun Utsav' festival. X was a student of Class-V in their school. The alleged incident took place in the month of March, 2017. On the day of the incident, the accused was painting the walls of their school. At the time of recreation, he along with the accused, Smti. Bonti Borgohain and the accused person's companion were having tea.
- 10) It is pertinent to mention at this stage that Sri Diganta Borkakoti is also a teacher in the same school in which the victim is a student of Class-V. He further testified that three students were playing in the verandah at the time of the incident. When they were having their tea, the accused person's mobile rang and the accused went out to answer the call. They were inside the room and inspecting the painting on the walls at that time. Two girls took away the empty cups and at that time X who was sobbing, went away from the verandah. He noticed that X was sobbing and he called her and asked her why she was crying, but she did not answer and went away to her house. After some time, 5 to 6 people came accompanied by X and they informed them that the accused misbehaved with X. Smti. Bonti Borgohain asked X about the incident and X informed her about the incident. The local people then suggested them not to engage the accused ever in other work, as he misbehaved with the victim. The victim's family members lodged this case against the accused person. On the following day, he went to the police station and gave his statement.
- 11) Thus, it is clear from the evidence of PW-4 that the accused was employed as a painter before the commencement of 'Gun Utsav' and within that period of employment, he committed the offence. Only three girls were present and were playing in the verandah when they were having tea and at that time,

the accused person's mobile rang and he went to answer the call. His evidence corroborates the evidence of PW-1 & 3 that when the accused went to attend the call, he molested the victim. The evidence of PW-3 & 4 clearly depicts that after the accused went out to answer the call, they noticed that the victim X was crying and whenPW-4 asked why she was crying, she did not answer, but went away to her house. The evidence of PW-3 & 4 reveals that after some time, the victim accompanied by a crowd came to their school and the crowd suggested not to ever employ the accused in any work as the accused misbehaved with the victim.

- 12) This evidence of PW-1, 2 3 & 4 could not be contradicted or controverted. All the witnesses were cross-examined in extenso, but the previous statement before the IO could not be contradicted.
- 13) The IO SI Sreemanta Bharali testified as PW-7 that on 15-03-17, he was posted at Tingkhong Police Station as Second Officer and on that day, an FIR was lodged by Sri Piku Keot which was registered as Tingkhong PS Case No. 36/17 under Section 8 of the POCSO Act and he was endorsed with the investigation of the case by the Officer-in-charge (OC in short) SI Biswajyoti Sharma. Ext. 2 is the FIR and Ext. 2(2) is the signature of SI Biswajyoti Sharma, which is familiar to him. He met the informant and the victim in the police station and he recorded their statements. The accused was also called to the police station and after recording his statement, he was arrested and forwarded to judicial custody. He also went to the place of occurrence on the next day and prepared the Sketch-Map and recorded the statements of the witnesses. Ext. 4 is the Sketch-Map and Ext. 4(1) is his signature. He forwarded the victim X for medical examination and also for recording her statement under Section 164 CrPC. On finding prima facie materials, he submitted Charge-Sheet against the accused. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature.
- 14) The extensive cross-examination of the IO does not rebut the fact that the accused groped the victim's breasts. It is true that certain discrepancies could be elicited. The IO did not record the statement of the scribe of the FIR. According to PW-1, an AATTSA member was the scribe of the FIR. Moreover, in his Sketch-Map Ext. 4, the IO depicted the entire school as the place of occurrence. He did not specifically point out the particular room as the place of occurrence. He did not record the statements of the victim's younger sister

- and her friends who were present at the place of occurrence. The remaining part of the cross-examination of the other witnesses are not noteworthy, because the cross-examination could not contradict the previous statements of the witnesses.
- 15) The MO Dr. Nibedita Shyam testified as PW-5 that on 16-03-17, while working as GDMO in the Department of Forensic Medicine, Assam Medical College & Hospital, Dibrugarh, she examined the victim X on police requisition in connection with this case. According to the MO, the victim was above fourteen years and below sixteen years. Ext. 3 is the Medico-legal Report and Ext. 3(1) upto Ext. 3(3) are her signatures.
- 16) There is no dispute that the victim was a minor at the time of the incident. There is clinching evidence that the accused person was present in the school. There is also clinching evidence that the victim was sexually harassed by the accused. even the accused person's co-worker Sri Trinayan Konwar testified as PW-6 that about 2/3 months ago, while he was working with the accused in the school, at about 12:00 noon, the teachers offered them tea. When the accused was having tea, he received a phone call and he went out. At that time, a girl who was sobbing went away. After some time, some people arrived with the victim and the victim alleged that the accused misbehaved with her. Sri Trinayan Konwar ascertained that the accused did not misbehave with her, because he did not see the accused misbehaved with the victim. He further stated that he did not see if the accused misbehaved with the victim. His evidence is in sync with the evidence of PW-4 who testified that he, PW-3 and PW-6 were having tea at the time of the incident.
- 17) Recapitulating the entire evidence, it is held that all the witnesses have clearly stated that one day in the month of March, 2017, at the time of recreation, the teachers were having tea and at that time, the accused received a phone call on his mobile and he went out and attended the phone call. PW-1, 2, 3, 4 & 6 have categorically stated that the accused went out to attend the phone call while they were having tea during the recreation time. There is no doubt about it. Thereafter, the accused touched the victim in an inappropriate way and so the evidence of PW-1 clearly depicts that the accused groped her breasts. The ejahar regarding this incident was lodged by her father as PW-1 reported about the incident to her father later, on the same day. The evidence of PW-1, 2, 3, 4 & 6 depicts that the mob went

charging towards the school authorities, because the accused was employed by the school authorities to paint the walls during the time of the incident. The evidence of PW-3, 4 & 6 clearly depicts that the victim went away sobbing at the time of recreation. We all know that the time of recreation starts from 11:45 am to somewhere upto 12:00 O' clock noon. The victim clearly stated that she went away home in tears, because the accused misbehaved with her. It is true that Smti. Moni Karmakar was not examined by the police and the other children were not examined by the police, but this does not nullify the fact that the accused misbehaved with the victim. There may be few discrepancies, but there is clinching evidence that the accused misbehaved with the victim.

- 18) The time mentioned by the witnesses from PW-1 upto PW-7 depicts approximately a date in the mid of March, 2017. It is during the Holi time and during the 'Gun Utsav' festival. It has already been held that the incident took place during the recreation time. All the witnesses could not give the accurate time, but the witnesses gave the approximate time, because they are residents of a village and it is natural that people may forget the exact date of the incident. A human mind is prone to remember the season or some important period and they have properly described the time as the 'Gun Utsav' festival during the month of March. The seguel of events clearly depicts that at the recreating time, the few teachers who were present, were having tea and then the accused who received the phone call, left the room to answer the call. As he was alone in the room answering his call, he grabbed the opportunity and called the victim and committed sexual harassment. Thereafter, the victim X after encountering the ordeal, was in tears, because she is a minor below the age of sixteen years. PW-4 & 5 noticed that the victim was in tears and she went away to her house. Thereafter, the victim returned accompanied by the AATTSA members and the villagers who charged the accused and the school authorities about the incident of sexual harassment.
- 19) It has been held by Hon'ble the Gauhati High Court in *Manik Medhi vs. State of Assam* [2016 (3) GLT 149] that:

"It is a settled proposition of law that once the statement of the prosecutrix inspires confidence, 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 to look for corroboration of her statement. If the substratum of the prosecution case is found to be wholly reliable and the evidence of the victim is found convincing and inspiring, it will not be necessary for the Court to go on looking for corroborating evidence."

- 20) I have relied on the decision of Hon'ble the Gauhati High Court. In the instant case, the statement of the victim inspires confidence. Moreover, her evidence is corroborated by the evidence of other witnesses. The evidence of PW-3, 4 & 6 relates to the later part of the incident. The evidence of PW-1 is consistent to her statement before the Magistrate. Moreover, Section 29 of the POCSO Act envisages presumption as to certain offences- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.
- 21) In view of my foregoing discussions, it is thereby held that the accused committed sexual harassment on the victim X.
- 22) Although the accused was tried for sexual assault, the victim could not specifically describe the assault through her statement and her statement. Whatever could be deduced from the evidence of the witnesses collectively, does not affirm that the accused committed sexual assault on the victim. But the gesture of the accused tantamounts to sexual harassment. So in view of my foregoing discussions, the accused is held guilty of sexual harassment as described under Section 11(i) of the POCSO Act.
- 23) Considering the facts and circumstances of this case, I believe that a sentence of imprisonment for a few months will suffice. The accused is young lad of 28 years and his age and antecedent is also taken into account.
- 24) I have heard the accused on the question of sentence and he stated that he is the sole bread winner of the family.
- 25) The accused was charged under Section 8 of the POCSO Act, but he is guilty of offence under Section 12 of the POCSO Act. The victim stated that the accused groped her breasts. So the accused is held guilty of offence

described under Section 11(i) of the POCSO Act.

26) Section 11(i) of the POCSO Act reads as follows:

"When a person with sexual intent, utters 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."

27) In this case, the victim did not clearly describe the act of the accused. So his act is held to be a gesture with sexual intent.

SENTENCE:

- 28) The accused Sri Madhurjya Gogoi is convicted under Section 12 of the POCSO Act and is sentenced to undergo rigorous imprisonment for 3 (three) months and a find of Rs. 500/- (Rupees Five Hundred) only, in default of payment of fine, to undergo rigorous imprisonment for 1 (one) month. The period of detention already undergone by the accused during investigation and trial is set off with his custodial sentence.
- 29) Furnish free copies of judgment to the accused and to the District Magistrate.
- 30) The victim who has undergone such an ordeal deserves compensation. This case is thereby recommended for compensation to the District Legal Services Authority, Dibrugarh to decide the quantum of compensation to be awarded to the victim under the Victim's Compensation Scheme.
 - Judgment is signed, sealed and delivered in the open Court on the 28th 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 Piku Keot;
- 3. PW-3 Smti. Bonti Borgohain;
- 4. PW-4 Sri Diganta Borkakoti;
- 5. PW-5 Dr. Nibedita Shyam;
- 6. PW-6 Sri Trinayan Konwar; and
- 7. PW-7 SI Sreemanta Bharali.

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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