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

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.12/2017

U/S- 341/354/323 IPC R/W sec 8 of POCSO Act, 2012

State of Assam

-Versus-

Md. Fajar Ali @ Fajal Hoque

s/o-Lt. Janul Uddin

Resident of vill -Porangaon

P.S.-Boko

Dist- Kamrup, Assam

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor ------for the State

Lutfur Rahman, Ld. Advocate ------for the accused

Date of evidence: 05.06.2018, 09.08.2018, 29.08.2018, 19.12.2018,

13.02.2019 and 09.05.2019

Date of Argument: 17.05.2019

Date of Judgment:30.05.2019

JUDGMENT

- The Prosecution case, briefly narrating is that on 20.05.2017 the informant Tahiran Nessa lodged an ejahar alleging that the accused—Fajar Ali often induced her when she used to go to school and on 20.05.2017 at about 9.00 a.m when she went for school the accused person restrained her intending to outrage her modesty and committed sexual assault upon her. Hence, this case.
- On the basis of the said ejahar, Boko P.S Case No. 242/17 U/S 341/354/323/506 of IPC r/w Section 8 of POCSO Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 341/354/323/506 of IPC r/w Section 8 of POCSO Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 341/354/323 IPC r/w Sec 8 of the POCSO Act, 2012 against accused—Fajar Ali @ Fajal Hoque. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 8 (eight) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and declined to adduce evidence.

5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 20.05.2017 at 9 a.m at village Puranagaon under Boko Police station wrongfully restrained the prosecutrix and, thereby, committed an offence punishable U/S- 341 of IPC?
- (II) Whether the accused person on the same date, time and place assaulted the prosecutrix intending to outrage her modesty and, thereby, committed an offence punishable U/S- 354 of IPC?

- (III) Whether the accused person on the same date, time and place voluntarily caused hurt to prosecutrix and, thereby, committed an offence punishable U/S- 323 of IPC ?
- (IV) Whether the accused person on the same date, time and place tried to rape the prosecutrix when she was going to school, aged below 18 years, and thereby committed sexual assault within the meaning of section 7 of the POCSO Act, 2012 punishable U/S- 8 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Let us go through the evidence on record.
- 7. P.W.1, prosecutrix, who is the informant of this case. She stated that she knows the accused—Fajar Ali. Before 14/15 days of the incident, accused used to say that he loved her. But she not agreed his proposal. The accused used to threaten her and asked her that she must love him. On the day of the incident when P.W.1 was proceeding to her school on the village road at Purangaon by the river bank, then the accused pulled back her bicycle and he gave her a slap. He also kissed her on the cheek. This witness stated that the incident was seen by her class mates—Minjuwara Purbin, Falani Nessa and Meghjan. After the incident, P.W.1 somehow managed to escape from there and she attended her school. She also informed the incident to her Head teacher. Her head teacher brought her to the house of her grandfather. From there P.W.1 went to police station to lodge the FIR. Thereafter she was brought before the Magistrate for recording her statement. Ext.1 is the written FIR, Ext. 1 (1) is her signature, Ext.2 is the printed form of the FIR, Ext. 2 (1) is his signature. Ext.3 is the statement. Ext. 3 (1) is her signature.

In her cross-examination, P.W.1 revealed that the day of the incident was a rainy day. She denied the suggestion that she fell down from her bicycle by herself and for that her clothes got stained and she returned back to her home. She also denied the suggestion that the accused did not slap and kiss her.

8. P.W 2, Samar Ali is the father of the prsoecutrix. He knows the accused person. He stated that the incident took place in the year 2017. On that day, he was in his working place at Guwahati. At about 4 p.m he received a phone call from his father-in-law (mama Sahur)-Jarip Ali asking him to retun back home. Accordingly, P.W.2 returned back home at 8.00 p.m and he met his father-in-law (mama Sahur)-Jarip Ali, who took him on a vehicle to the police station for lodging an ejahar. Prosecutrix also accompanied them. He heard that prosecutrix was restrained by the accused on her way to school and he laid her on the ground and kissed her.

In his cross-examination P.W.2 stated that there was a village mel regarding the incident but the accused did not agree with the decision of the village elders. P.W.2 heard that the village elders asked an amount of Rs.40,000/- / Rs.60,000/- to settle the dispute. But the accused did not agree with the decision. So, Jarip Ali advised him to file the case.

9. P.W.3, Dr. Rabiul Hussain is the Medical Officer, who examined the prosecutrix. He deposed in his evidence that on 20.05.2017 he was working as a Medical Officer at Sontali PHC. On that day, he examined the prosecutrix aged about 14 years in connection with Boko P.S case No. 242/17 escorted by HG, Safiqul Hoque. P.W.3 deposed that on physical examination, he found soft tissue injury over her right forearm. On enquiry from the victim, P.W.3 came to know that the date of assault is on 20.05.2017 at about 1.00 p.m caused by blunt object. P.W.3 opined that no any external injury is found. His medical report was issued by him on 27.05.2017. Ext.4 is the medical report. Ext. 4 (1) is his signature.

In his cross-examination P.W.3 disclosed that he did not ascertain the time of injury by himself and mentioned as reported by the victim. The injury over the right forearm may be caused by falling from hard substance.

- 10. P.W 4 Sabed Ali did not know anything about the incident.
- 11. P.W.5, Miss Abeda Begum and P.W.6, Miss Nasima Begum did not know anything about the incident. Both the witnesses have been declared hostile by the prosecution.

- 12. P.W.7, Chaiman Nessa is the mother of the prosecutrix. She has deposed in her evidence that prosecutrix was studying in class-IX at the time of incident. She was aged about 14-15 years. On the relevant day, P.W.1 had gone to the school in the morning while P.W.7 was at home. This witness disclosed that the incident took place on the way to school. She also stated that at 10.00 a.m her daughter's friend-Manjuara, who came and informed her that a boy caught the bicycle of the prosecutrix (P.W.1) on the way and he stopped her. But, out of fear Manjuara returned back and informed P.W.7. P.W.1 was brought home by her school teacher—Hazarat Ali at 1.00 p.m. P.W.7 heard from prosecutirx's friend that the accused touched the cheeks of the prosecutrix and gave a bite on her cheeks.
- 13. P.W.8, S/I Anil Sarma is the I/O of this case. He deposed in his evidence that on 20.05.2017, I was working as i/c Sontali O.P under Boko P.S. On that day at 10.25 p.m he received a written ejahar from one Musstt. Tahiran Nessa. He made a G. D. Entry being No. 310/2017 and send the ejahar to Boko P.S for registering a case. Thereafter, O/C, Boko P.S registered a case vide Boko P.S Case No. 242/2017 U/S-341/354/323/506 of IPC R/W section 8 of the POCSO Act, and directed him to investigate the case. And accordingly, P.W.8 recorded the statement of the informant/victim and her father in the Out-Post itself and sent the informant/victim for medical examination to Sontali PHC. On the next day i.e. 21.05.2017 P.W.8 visited the place of occurrence and recorded the statement of the witnesses and also prepared the sketch map. Accused—Md. Fajar Ali was found on house search. Thereafter, P.W.8 arrested the accused and brought him to the Out-Post and produced him before the Court. On 23.05.2017 he produced the victim before the Magistrate for recording her statement U/S-164 Cr. P.C. The victim was kept in the State Home from 23.05.2017 till 25.05.2017. On 23.05.2017 the informant/victim was sent for her medical examination in GMCH. But she refused medical examination. Thereafter, P.W.8 completed investigation and after finding sufficient materials against the accused, he submitted charge sheet against the accused—Md. Fajar Ali U/S-341/354/323/506 of IPC R/W section 8 of the POCSO Act. Ext.5 is the sketch-map and Ext. 5(1) is his signature, Ext.6 is the charge-sheet and Ext. 6 (1) is his signature.

In her cross-examination, P.W.8 stated that there is no any river or river bank nearby the place of occurrence. There was an embankment near the place of occurrence. P.W.6 did not tell me that she heard from the victim that while she along with other students were going to school then on the way she met the accused person.

- 14. I have heard the arguments of both the sides. Perused the evidences on record. Learned Counsel for the accused submitted that the accused has been falsely implicated in the case and the accused did not commit any sexual assault on the victim girl. On the other hand, the learned Additional Public Prosecutor argued that the charges have been well proved against the accused person.
- 15. Here, in this instant case, the accused is charged u/s 341/354/323 IPC R/W section 8 of POCSO Act. Now, it has to be seen as to whether the accused wrongfully restrained the minor daughter of the informant with the intent to commit an offence and he committed sexual assault upon the prosecutrix (Minor daughter of the informant).
- 16. The, question first comes, whether the offence committed by the accused falls u/s 8 of POCSO Act. **Sexual Assault** is defined **U/S 7 of POCSO Act** as "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." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act.
 - 17. It has come out from the evidences of guardians of the prosecutrix and the prosecutrix herself in her statement before the Magistrate (Ext.3) stated that she was 14 years old at the time of incident. P.W.3 (M.O) also confirm that victim was aged 14 years old at the time of occurrence. So, she was a minor child of U/S-2 (d) of POCSO Act at the time of incident.
 - 18. Now, it is in the evidence of the prosecutrix (pw-1), who is the star witness in this case that at the time of occurrence while she was proceeding to the school, the accused restrained her and he gave her a slap and kissed her on her cheeks. Evidence of P.W.1 is supported by her parents (P.W.2 and P.W.7). The version of P.W.2 is that P.W.1 was restrained by the accused on her to school and he kissed her. P.W.5 and 6 have been declared hostile by the prosecution. P.W.7 stated that

she heard that the accused restrained P.W.1 on the way to school. Coming to the evidence of P.W.1 it is found that there is full corroboration in her evidence before the court and her statement before the Magistrate recorded U/S-164 Cr. P.C (Ext.3), wherein she has clearly alleged that on the date of occurrence, while she was going to school, accused restrained her, he slapped her and gave a kiss on her cheek. Though the victim was subjected to cross-examination but nothing has come out to create doubt in her testimony.

19. In the case of MUKESH Vs- STATE OF CHATTISHGARH, reported in (2014) 10 SCC 327, the Hon'ble Supreme Court has held that the sole testimony of the witness is sufficient to establish the commission of rape even in the absence of corroborative evidences. In the case of MD. IQBAL AND ANOTHER —Vs-STATE OF JHARKHAND, AIR 2013 SC 3077, it has been held that there is no prohibition in law to convict the accused of rape on the basis of sole testimony of prosecutrix and the law does not require that her statement be corroborated by the statement of other witnesses.

In view of the above, in this instant case, the testimony of the victim must be accepted to be true.

- 20. As regards the allegation of wrongful restraint U/S-341 IPC, it has clearly come out from the evidence of the prosecutirx (P.W.1) that she was restrained by the accused while she was proceeding to school, so this attracts section 341 of IPC. Therefore, the accused is guilty of wrongfully restraining the victim and committing sexual assault on her. This attracts section 341 of IPC R/W section 4 of POCSO Act.
- 21. As regards the offences U/S-354/323 of IPC, I find no iota of evidence on record implicating the accused of assaulting or using criminal force on the prosecutrix intending to outrage her modesty and voluntarily causing hurt to her. So, section 354/323 of IPC are not at all attracted in this case.
- 26. Regarding culpable mental state, we may refer to **Section 30 of POCSO Act** which reads as follows –:

30. Presumption of culpable mental state

- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental State with respect to the act charged as an offence in that prosecution.
- (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
- 22. In the instant case on 20.05.2017 at 9.00 a.m, it is well proved that the accused restrained the prosecutrix on the road side while she was on the way to her school, who was 14 years old and he pulled her and committed sexual assault on her. Therefore, it must be presumed that the accused had culpable mental state in committing the alleged offence. That apart, the presumption of guilt U/S-29 of POCSO Act also needs to be applied as all the necessary facts regarding commission of the offence under the POCSO Act have been proved. The said presumption also has not been rebutted by the accused by adducing any evidence in his defence.
- 23. In the result, from the facts and circumstances of the case, it is held that the prosecution has succeeded in bringing home the charges under section 341 of IPC r/w Sec 8 of the POCSO Act, 2012 against accused –Fajar Ali beyond all reasonable doubt. Hence, he is held guilty of committing the offence punishable under section 341 of IPC r/w Sec 8 of the POCSO Act, 2012 and is convicted under the said sections of law.
- 24. Now, keeping in view the nature of the offence, accused is not entitled to get the benefit under the provisions of the Probation of Offenders' Act.
- 25. Heard the accused on the question of sentence. Also heard the Learned Defence Counsel as well as the learned Addl. Public Prosecutor. Accused has stated that he has not committed the offence and he has no earlier criminal antecedent. He submitted that he works as a labour. He has pleaded leniency in awarding the punishment.

- 26. Considering the entire facts and circumstances of the case ,the nature of the offence and the mental injury suffered by the child victim, accused –Fajar Ali is sentenced to undergo rigorous imprisonment for 3 (three) years and to pay a fine of Rs 3,000/- (Rupees three thousand) only in default to undergo rigorous imprisonment for 6 (six) month, for the offence under section 8 of POCSO Act., which in my opinion, will meet the ends of justice in this case. The accused is further sentenced to pay a fine of Rs.500/- (Rupees five hundred) only for the offence U/S-341 of IPC.
- 27. The period of detention already undergone by the accused will be set off from the period of imprisonment.
- 28. Now, coming to the aspect of compensation to the victim, who is a minor girl. She has suffered mental agony. And she needs to be provided with restorative and compensatory justice. So, the Learned Secretary, District Legal Service Authority, Kamrup, Amingaon is directed to assess and grant adequate compensation to the prosecutrix (P.W.1). The said compensation amount shall be used by the parents of the victim for her welfare.
 - 29. The Judgment is delivered in open Court and written on separate sheets.
 - 30. A free copy of the Judgment be furnished to the convict immediately. A copy of this order and Judgment be sent to the District Magistrate, Kamrup, Amingaon as per provision of law.
 - 31. Given under the hand and seal of this Court on the 30th day of May, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, prosecutrix

P.W 2, Samar Ali

P.W.3, Dr. Rabiul Hussain

P.W 4 Sabed Ali

P.W.5, Miss Abeda Begum

P.W.6, Miss Nasima Begum

P.W.7, Chaiman Nessa

P.W.8, S/I Anil Sarma

Prosecution Exhibit

Ext.1 is the written FIR,

Ext.2 is the printed form of the FIR

Ext.3 is the statement

Ext.4 is the medical report.

Ext.5 is the sketch-map

Ext.6 is the charge-sheet

Special Judge, Kamrup, Amingaon