# IN THE COURT OF THE SPECIAL JUDGE (POCSO): KAMRUP(M), AT GUWAHATI

#### SESSIONS CASE NO.36/2018

(Under Section 12 of the POCSO Act, 2012)

Present: S.P. Moitra,

Special Judge

Kamrup(M), Guwahati

**State of Assam** 

-Vs -

**Srimanta Talukdar** 

.....Accused Person

## **Appearance for the Parties:**

For the State : Smt. Deepa Bezbaruah

.....Learned Special Public Prosecutor

For the accused : Sri A.M Bora, Sri A Choudhury, Sri D Gogoi,

Sri D.K Baishya, Sri R Barthakur

.....Learned Advocates

Date of recording evidence: 21.08.2018

Date of Argument: 03.10.2018

Date of Judgment: 6.10.2018

#### J U D G M E N T

**1.** Brief facts of the case of the prosecution are that on 26.08.2017, the Child Line Guwahati informed Geetanagar P.S that one minor girl is engaged as child labour in the house of accused Srimanta Talukdar of Ambikagiri

Nagar under Geetanagar P.S. Accordingly, the informant with the help of Child Line staff recovered the said child victim and handed over her to Child Line Guwahati. The child victim was aged about 16 years and she stated that she was sexually abused by the keeper Srimanta Talukdar at the time of staying in his house.

- 2. On the basis of the said FIR, Geetanagar P.S Case No.336/17 was registered u/s 12 of the POCSO Act, 2012 and was taken up for investigation. During investigation of the case, the statement of the victim was recorded u/s 164 of the Cr.PC. The victim was sent to GMCH for medical examination, but she refused to allow medical examination. Due of insufficient evidence, the I/O submitted FR in this case vide FR No. 239/17, dated 11.10.2017. However, the Court rejected the FR, after finding sufficient materials against the accused person in the case diary and directed to issue summons to the accused.
- 3. The accused person entered appearance and he was allowed to go on bail of Rs. 20,000/- with one surety of the like amount. On consideration of charge, charge u/s 12 of the POCSO Act, 2012 was framed against the accused person. Charge was read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.
- **4.** In course of trial, the prosecution examined, as many as, 3 witnesses on its behalf and also exhibited 1 document. Defence plea was of complete denial of any guilt. Statement of the accused person was recorded u/s 313 of the Cr.P.C. Defence adduced no evidence on its behalf.
- **5.** I heard arguments, advanced by the Ld. Counsel for the parties.

## 6. Points for determination

Whether on 26.08.2017 or on any other date before, the accused person committed sexual harassment upon the victim Maina Tanti, aged about 16 years at his house, situated at Ambikagiri Nagar under Geetanagar P.S?

### **Decision and Reasons thereof**

7. I have gone carefully through the entire evidence on record and the materials placed before me. PW.1 Bashanti Tanti is the mother of the victim. She testified that her daughter was given to work in the house of accused Srimanta Talukdar and his house is situated at Zoo Road. She further testified that her daughter was then aged about 18 years and added that her daughter had worked earlier in a house at Bhetapara. She further added that from there Srimanta Talukdar brought her to his house. Her testimony further reveals that she came to Guwahati to take back her daughter, but Srimanta Talukdar did not allow her daughter to go with her. She further testified that then she took help of Child Line Guwahati and Child Line Guwahati recovered her daughter and gave her daughter into her custody. She added that at present her daughter is residing with her. She further added that her daughter did not report anything to her. During cross examination, the witness stated that she does not know about the present case. She further stated that the present age of her daughter is about 19 years. She reveals that as Srimanta Talukdar did not allow her daughter to go, her daughter cried before her, which compelled her to go to Child Line and Child Line recovered her daughter. She further testified that her daughter did not report her anything about any misbehavior by the accused person or his wife. She added that police examined her in connection with the present case and she

told them that she was not inclined to proceed with any case against the accused.

- 8. PW.2 Maina Tanti is the victim of the present case. She testified that last year she worked in the house of accused Srimanta Talukdar, situated at Zoo Road. She further testified that she was staying there in the said house as domestic help and she worked there for about 6 months. She further added that he (accused) was not paying her wages, nor allowed her to go to her house and also did not allow her to talk to her mother over phone. Her testimony further reveals that then one day she talked to her mother over phone and asked her to take her back and then her mother came to Guwahati for taking her (PW.2) with her. She added that the accused person did not allow her to go and then her mother took the help of Child Line Guwahati. She also reveals that the Child Line rescued her and kept her in an Ashram and added that Child Line also took her to CWC and CWC gave her custody to her mother. She further testified that Child Line also produced her before the Court and she gave her statement before the Magistrate. She added that she stated before the Magistrate, whatever she stated before the Court. She further added that she did not file any case. During cross examination, the witness stated that Child Line people did not tutored her to state before the Magistrate.
- PW.3 Bala Krishna Giri is the police officer and the informant of the case. He testified that the occurrence took place about 6/7 months ago and then he was posted at Geetanagar P.S. He further testified that on 26.08.2017, one day Child Line Guwahati came to the police station and sought police help for rescue of a child. His testimony further reveals that O/C Geetanagar PS detailed him to accompany the Child Line and accordingly he along with the Child Line went to Ambika Giri Nagar in the house of the accused. He

added that Child Line recovered the victim girl, who stated before them that the accused person was not paying her monthly wages and was not allowing her to go to her house. He further testified that her mother also came, but the accused person did not allow her to go. He added that the victim stated this much to them and also stated that the accused person gave her bad indications. He further added that the Child Line rescued her and took the victim girl to their office. His testimony further reveals that after that 10/15 days passed and Child Line did not file any complaint. He also added that the mother of the victim came to the police station stating that her daughter was not handed over to her by the Child Line and then O/C instructed him to file the FIR. He further testified that accordingly he lodged the FIR. He proved Ext.1 as the FIR and Ext.1(1) as his signature. He added that he did not investigate the case and the case was investigated by WSI Nilima Boro Bordoloi. During cross examination, the witness stated that the victim girl was rescued on 26.08.2017 and he lodged the FIR on 08.09.2017. He admitted that he did not meet the victim girl in between the two dates and also did not record her statement.

**10.** Thus, on consideration of the entire evidence on record, I find that the prosecution has failed to establish any guilt of the accused person. The evidence of the victim suffers from inherent contradiction in comparison to her previous statement, recorded on oath u/s 164 of the Cr.P.C. In her statement recorded u/s 164 of the Cr.P.C, she had narrated a complete different story. However, it transpires that she was suffering from mental agony due to attitude of the accused, not to allow her to go back to her house immediately, as demanded by her and her mother. As soon as, she was given in custody of her mother, she changed her version and admitted before the Court in her evidence that no such occurrence had taken place. As

the prosecution has failed to establish the guilt of the accused, removing all shadow of doubt, I find it just to acquit the accused person.

- **11.** In result, accused Srimanta Talukdar is held not guilty of offence punishable u/s 12 of the POCSO Act 2012 and accordingly he is acquitted and set at liberty forthwith. Bail bond, furnished on his behalf, will remain in force for the next 6 months.
- **12.** Signed, sealed and delivered in the open court on this 6<sup>th</sup> day of October, 2018 at Guwahati.

(S.P. Moitra)
Special Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)
Special Judge,
Kamrup(M), Guwahati

# **APENDIX**

(A) Prosecution Exhibits:

Ext-1: F.I.R

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1: Smt. Bashanti Tanti

PW-2: Miss Maina Tanti

PW-3: Sri Bala Krishna Giri

(F) Defense Witnesses: Nil

(G) Court Witnesses: Nil.

(S.P. Moitra)

Special Judge, Kamrup(M), Guwahati