#### IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

# JUDGMENT IN SPECIAL POCSO CASE NO. 47 OF 2017 (G.R. Case 3395 of 2017) Baghbar P.S. Case No 173 of 2017

State of Assam

-versus-

1. Jeherul @ Sanidul Islam, S/O Taripuddin, Resident of Mourigaon, P.S. Baghbar,

Dist.: Barpeta, ...... Accused.

#### **APPEARANCES:**

For the State : Sri Lalit Ch. Nath, learned Public Prosecutor,

Barpeta &

Sri M. Ahmed, learned Addl. Public Prosecutor,

For the Accused : Goutam Behari Das, learned Advocate, Barpeta.

# CHARGE FRAMED UNDER SECTION 294/354 OF THE INDIAN PENAL CODE READ WITH SECTION 11 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 09.01.2018,

Date of Prosecution evidence : 22.02.2018, 10.04.2018, 25.05.2018,

26.07.2019,

Date of recording Statement : 14.08.2019, Date of Argument : 21.09.2019 Date of Judgment : 01.10.2019.

## JUDGMENT

1. The prosecution case, in brief, is that Baghbar P.S. Case No 173 of 2017 under section 341/294/323/363/374/506 of the Indian Penal Code, 1860 Read with section 11 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Babida Parbin, who is informant as well as the victim of this case.

In the aforesaid F.I.R. Dated 13.07.2017 **[Ext.1]** the informant Babida Parbin alleged interalia that on the same day at about 7 AM, when she was coming home from doing tuition at Dighirpam High School, then at the school campus, the accused person proposed her. But she rejected his proposal for which the accused person tried to take her away forcefully but the friends of the victim saved her from the clutch of the accused persons. It is further alleged that the accused person caused injury to the victim on her cheek by slapping her and also took away the gold chain from her neck wherein "Allah Hu" was written. It is further alleged that the accused often restrained the victim when she used to go to school by bicycle and matter was also informed to guardian of accused.

On receipt of the aforesaid F.I.R. by the In-charge, Mandia Police Out Post, the same was entered vide G.D. Entry No.111, dated 13.07.2017 and it was registered as Baghbar P.S. Case No 173 of 2017 under section 341/294/323/363/374/506 of the Indian Penal Code, 1860 Read with section 11 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Jeherul @ Sanidul Islam under section 341/294/323/363/506/511 of the Indian Penal Code, 1860 Read with section 11 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.85, dated 31.07.2017.

- **2.** Accused person was produced after filing of charge-sheet against him. On appearance of accused, copy was furnished to him by my learned Predecessor-in-office.
- 3. Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused person and the prosecution in this behalf, charge was framed against the accused person u/s 294/354 IPC R/W section 11 of the Protection of Children From Sexual Offences Act, 2012 my learned Predecessor-in-office. The same which was read over and explained to the accused person, to which, the accused pleaded not guilty and claimed to be tried.
- **4.** During the course of trial, **07(seven)** number of witnesses including the victim, informant, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge u/s 294/354 IPC R/W section 11 of the Protection of Children From Sexual Offences Act, 2012 against the accused.

On completion of prosecution evidence, statement of the above named accused person was recorded u/s 313 of CrPC. The accused person denied all the alleged incriminating materials against him. He claimed himself to be innocent. He also stated that father of the victim is President of S.M.C. Madrassa and father of accused, is also member of said Madrass and his father caught him while selling stolen articles of Madrassa. Accused denied to adduce evidence in his defence.

- I have heard argument advanced by Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as the learned Defence Counsel for the accused person, who is facing trial for commission of offence u/s 294/354 IPC R/W section 11 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether the accused person, on 13.07.2017 at about 6:00 AM at Dighirpam within the jurisdiction of Baghbar Police Station, District

Barpeta, to the annoyance of Babida Parbin did the obscene act i.e. gave illicit gesture of love affairs and thereby committed an offence punishable u/s 294 of the Indian Penal Code ?

- (2) Whether the accused, on the aforesaid date, time & place, assaulted or used criminal force to Babida Parbin intending to outrage or knowing it to be likely that the accused would thereby outraged her modesty and thereby committed an offence punishable u/s 354 of the Indian Penal Code?
- (3) Whether the accused, on the aforesaid date, time & place, committed sexual harassment on Babida Parbin and thereby committed an offence punishable u/s 11 of the Protection of Children From Sexual Offences Act, 2012?

#### **DISCUSSION, DECISIONS AND REASONS THEREOF**

**7.** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

The victim **[PW1]**, who is also the informant of this case, deposed in her evidence before the court that on 13.07.2017 at around 7 AM, the she alongwith her friends Sahnaj, Khalida, Rahima, Arjuma went to Dighirpam High School for taking tuition. Sukur master did tuition. At about 8 AM, when they were coming back after tuition, the accused appeared before the victim and made proposal of love before her. Victim refused and then the accused, dragged the victim holding her hand and slapped her. Her friends prevented and her gold locket was unstrung where the words "Allah Ho" was written and the accused took away the same. PW1 further stated that that prior to this incident, the accused person pulled her cycle while she was coming from school and she did not disclose this to anybody. PW1 lodged the ejahar and exhibited the ejahar vide **Ext.1** wherein **Ext.1(1)** is her signature. Police sent her for medical examination and got her statement recorded by learned Magistrate. She exhibited her statement vide **Ext.2** wherein **Ext.2(1)** &

**2(2)** are her signatures. She also stated that she narrated the same facts before the police and learned magistrate.

**During cross-examination**, PW1 has stated that the ejahar was not written by herself and she does not know the name of the person who wrote the ejahar. Police examined her in thana and on that very day she was produced before the learned Magistrate and the statement which she gave before the learned Magistrate was not tutored by police. Her friends reside near her house and Sahnaj is her cousin sister.

She denied that she did not state before police that at about 8 AM, when they were coming back after tuition, then, near the gate of the school, the accused appeared before the victim and made proposal of love before her.

She also denied that she did not state before police that **accused** took away the gold locket from her neck where the words "Allah Ho" was written.

She stated that her father is the Presidentof Dighirpam M.E. Madrassa and father of accused is member of that Madrassa. She also stated that she does not know if father of accused lodged case against her father alleging theft of rice of mid-day meal of Dighirpam M.E. Madrassa. Her father did not take her to medical prior to lodging of this case.

She denied that her father lodged the instant case out of grudge as father of accused lodged case against her father.

Witness **Sahnaz Parbin** [**PW2**] deposed that she knows the victim and they study in the same class. On 13.07.2017 at around 7 AM, they went to do tuition at Dighirpam School and on returning from tuition, in front of the school the accused person appeared before them and made proposal of love before Babida. As Babida rejected the said proposal of love, the accused person assaulted the victim. The accused person also snatched the gold locket of the victim where the words "Allah Ho" was written. PW2 further stated that the accused used to pull cycle of victim while going to school and sometimes accused kept standing on the road taking a lathi. PW2 also stated that Arjuma, Khalida, Rahima were also alongwith

them and they all accompanied father of Babida to thana. It is further stated that by PW2 that when she resisted the accused at the gate of school, he pushed her and police took her also to hospital.

**During cross examination**, PW2 has stated that she is appearing for her HSLC Examination. She does not know the name of the teacher to whom they went for tuition, but lateron she said that his name Sukur Sir. She stated that Sir did not see the incident. Babida is her cousin sister. Father of Babida took them to thana.

She denied that she did not state before police that in front of school gate accused assaulted Babida and snatched away the locket; that sometimes accused kept standing on the road taking a lathi.

She also stated that at the relevant time, Akkes and many other persons were present at the place of occurrence besides the girls.

She further denied that she has deposed falsely today for the sake her cousin sister; she has falsely stated that accused pushed her.

Witness **Akkesh Ali [PW3]** deposed in her evidence before the court that he knows the victim and her father. On 13.07.2017, when he was at market. After 8 AM of the relevant date, he heard that accused assaulted the victim and a gold chain or a locket was lost.

**During her cross examination**, PW3 stated that he heard about the incident in the market, but he does not remember as to from whom he heard about the incident. He also stated that he did not stated before police that accused assaulted Babida.

Witness **Kabir Hussain [PW4]** deposed in his evidence before the court that victim is his daughter and he knows the accused. Incident occurred before 8/9 months. His daughter used to go to Dighirpam school for tuition to Sukur Mamud at 6 AM and returned at 7 AM. On the relevant day, one person telephoned him that the victim was assaulted. Then he came to the spot which was the school field. There was 15/20 other boys and girls alongwith Babida, who was weeping. On being asked, friends of victim told him that the Jeherul made love proposal to victim

and as she rejected it, Jeherul assaulted her and also snatched the gold locket of the victim where the words "Allah Ho" was written. He also stated that he did not see Jeherul there. PW4 also stated that friends of victim resisted the accused when he assaulted her. In the evening they went to than where the victim filed the ejahar. Public caught the accused and handed over to police. Police took the accused. PW4 also stated that police examined him.

**During cross-examination**, PW4 stated that he was not present at the time of incident. He heard about the incident from Babida and her friends.

He denied that he did not state before police that Babida was weeping in the field and on asking her as to what happened, her friends told that Jeherul made proposal "love you", as she did not agree Jeherul assaulted her.

He also denied that he did not state before police that accused snatched away the gold locket of Babida from her neck where the words "Allah Ho" was written. He denied that he has deposed today by exaggerating the facts.

He admitted that he is the President of Managing Committee of Dighirpam school. He denied the fact of lodging case against him by father of accused alleging theft of rice is not true.

He denied that he has deposed falsely today.

Witness **Sukur Mahmud [PW5]** deposed in his evidence before the court that he is a teacher of Goalpara Chanduwa M.E. School and during vacation he used to stay at his home at Dighirpam. In the 2017, during summer vacation he did tuition in Dighirpam School from 6 AM to 7/7:30AM. On the relevant day also he did tuition. Babida Parbin alongwith her friends also did tuition under him. But on the next day victim and her did not come to tuition. On enquiry he came to know that one boy named Jeherul slapped Babida. Lateron, he came to know from Babida that accused made indecent proposal before her and slapped her and then he lodged case in thana. Police examined him.

**During cross-examination** PW5 stated that he heard about the incident on the next day. He forgot the date of incident.

Witness Dr. Abdul Baten [PW6], who is one of the M.O. of the

case, stated in his evidence before the court that on 13-07-2017 he was working as M.O. at Mandia BPHC, Barpeta. On that day, in connection with Mandia OP GDE No.222 dated 13-07-2017, he examined **Shahanas Parbin**, aged 15 years, D/O Asrab Ali, Vill- Dighir Pam, PS- Baghbar, Dist-Barpeta, Assam at 10:10 AM and on examination he found one tenderness on the left shoulder joint. The injury was caused by blunt object. PW6 exhibited the medical report vide Ext.3 and Ext.3(1) is his signature.

On the same date, in connection with the same case No. at 10:05 AM, he also examined **Babida Parbin**, aged 15 years, D/O Kabir Hussain, Vill- Dighir Pam, PS-Baghbar, Dist- Barpeta, Assam. On examination he found tenderness on her left cheek. The injury was caused by blunt object.

PW6 exhibited the medical report vide Ext.4 and Ext.4(1) is his signature.

**During her cross-examination**, PW6 stated that in Ext.3 & 4, the names of the patients, address and case No. are not written by him. The rest part is written by him. Tenderness is not visible. It can be ascertained on the basis of the complaint of the patient. The alleged history is not written in the Ext.3&4. None of the patients is identified to him by any other person. They were self escorted.

Witness **Mwblik Brahma** [**PW7**], who is the I.O. of this case, stated in his evidence that on 13-07-2017 he was working at Mandia OP as its in-charge. On that day at about 9.30 AM two girls came to police OP alongwith her father. They lodge one FIR. He entered the same vide. GDE No. 222 dated 13/07/2017. He forwarded the FIR to OC Baghbar PS for registration of the case.

He then recorded the statement of informant and the other girl who accompanied her at that time.

He then proceeded at the place of incident. He drew the sketch Map. Ext 5 is the sketch map. Ext. 5 (1) is his signature. He recorded the statement of other relevant witnesses.

In the meantime, he got information that accused Jeherul Islam was caught by public and had been detained at Dighir Pam Market. He went there and brought the accused to police OP.

OC Baghbar PS registered the FIR as Baghbar PS case No. 173/2017.

The officer in-charge of Baghbar PS directed him to investigate the case. Ext. 1 is the FIR and 1 (2) is the signature of the then officer in-charge Sri Tarun Ch. Boro.

He examined the accused and forwarded him to Ld. Court. Both the victims who came to thana were sent for their medical examination. And he also got their statement recorded u/s 164 Cr.P.C.

On 31-07-2017 he submitted charge-sheet against the accused person vide CS No. 85/2017 dated 31/07/2017 after collecting medical report. Ext. 6 is the charge-sheet and Ext. 6(1) is his signature.

**During cross-examination**, PW7 stated that the name of the person who wrote the FIR (Ext. 1) is not mentioned in the FIR itself. He does not who caught the accused person at Dighir Pam Market and he did not take any statement, in this regard.

He did not seize any locket written therein as Allah Hu Akbar. School of the victim was closed at that time. There were no dwelling house at the place of incident.

He does not remember whether father of the accused lodged theft case of rice against father of victim.

Victim (PW-1) did not state before him that accused took her golden locket where "Alah Hu" was written.

He did not investigate regarding the relation of Shehnaz Parbin with Babida Parbin.

Witness Shehnaz Parbin did not state before him that accused snatched locket from Babida at the time of incident.

**9.** Marshalling the entire evidence on record, it is seen that victim[PW1] and her cousin sister [PW2] deposed about the tale telling incident of assault allegedly caused upon the informant-cum-victim by the accused on the date of incident.

It is to be worth mention hear that incident occurred near the exit gate of Dighirpam High School at about 8:00 AM. Victim[ PW1] deposed that on the relevant date at about 7:00 AM she alongwith Sahnaz [PW2], Khalida, Fatima and Arzuma went to take tuition from Sukur Ali teacher[PW5] and when they were

coming out from school after tuition was over, then accused proposed love to her. she did not agree, then accused pulled her by her hands and slapped her. victim also deposed that her friend restrained the accused and at that time the golden locket, on her neck, where "Allah hu" was written fell and accused took the same with him.

Eye witness of the incident, Sahnaz Parbin[PW2], who is cousin sister of victim, deposed that accused assaulted the victim, on the relevant date, when she rejected love proposal of accused. She also deposed that accused also pushed her when she restrained accused at the time of incident. PW2 also deposed that at the time of incident Akkesh and many other persons were present apart from girl students.

However, Akkesh Ali, deposing as PW3, denied that he was present at the time of incident and deposed in his examination-in-chief that he was at market at the time of incident. He simply stated that he heard about the incident but could not say who told him about the incident. He admitted that he did not not state before police that accused assaulted the victim. The evidence of PW3 is not important or going to help the prosecution case.

PW4 is the father of victim, who did not see the alleged incident himself.

Similarly, witness Sukur Mahmud[PW5] deposed that he heard about the incident on the next day of incident. He deposed that victim was given indecent proposal by the accused.

Now, coming to the evidence of Medical Officer [PW6] namely Dr. Abdul Baten, who examined the PW1 and PW2 on the date of incident. It is seen that he found tenderness on the left shoulder and left cheek of victim [PW1] and her cousin sister[PW2]. However, in his cross-examination he deposed that tenderness was not visible and same was ascertained only on the complaint of patients. The Medical Officer also admitted that on the medical reports [Ext.3 & Ext.4] the names of patients, case No. and their addresses were not written by him. He also deposed that patients were escorted by self and nobody identified them to him.

Generally, if the name of patients, their addresses, case No. is not written by the Medical Officer himself, it does not matter much. But the matter is

important as the I.O.[PW7] Mwblik Mrahma deposed that he sent the victim girls for their medical examination, who came to him at 9:30 AM. Ext.3 and Ext.4 [medical examination report] show that the M.O.[PW6] examined the victim girls at 10:05 AM and 10:10 AM respectively. But as per First Information Report seen by learned J.M. 1st Class, Barpeta, it is seen the that matter was reported to police on 13.07.2017 at 12:45 PM. That means, victims were examined by M.O.[PW6] at 10:05 AM and 10:10 AM of the same day before matter was reported to police on the date of incident.

It cast serious doubt on the authenticity of evidence of prosecution case that accused assaulted the victim and PW2 and police sent them for their medical examination on the same date after 12:45 PM, as M.O. stated that he examined PW1 and PW2 at 10:05 AM and 10:10 AM respectively.

**11.** Moreover, not a single independent witness has supported the case of prosecution. Prosecution side has failed to examine even a single girl friend of victim, who were reportedly with her, at the time of incident, for the reason best known to it.

PW3, who was allegedly present at place of incident, as per version of eye witness [PW2], did not corroborate the evidence of PW2 and deposed that he was at market only at the relevant time.

The only witness [PW2], who deposed that accused assaulted the victim, on the alleged ate of incident, is her cousin sister, so her evidence cannot be relied fully in absence of evidence of any uninterested witness, who were admittedly present at the time of alleged incident.

12. In the case of *Utpal Mishra –versus- State of Assam, 2015 [2] GLR 542*, it has been held by the Hon'ble Gauhati High Court in <u>Para No-22</u> of its judgment as follows:

#### **PARA NO-22**

The principle of criminal jurisprudence are that:

a) There should be legal, reliable and unimpeachable evidence

prove that the prosecution story "must be true" rather than "may be true";

- b) It is a settled principle of criminal jurisprudence that more serious the offence, stricter is the degree of proof;
- c) Standard of proof in a criminal case: burden is always on the prosecution and the same never shifts. Prosecution can never drive any benefit from the weakness of the defence version;
- d) Holding a witness "implicitly reliable" leads to denial of judicial consideration of the infirmities in evidence;
- e) Defence witness cannot be disbelieved by relying on conjectures and surmises: they are entitled to equal treatment with those of the prosecution;
- f) If two views are possible in a criminal case, the view favourable to the accused should be accepted;
- g) The averment/allegation with respect to the commission of rape has got to be clear and specific for basing a finding of guilt rather that being just inferential. The evidence /averments /allegations must fulfill the ingredients of offence of RAPE as denied under Section 375 of IPC;
- h) The prosecution must prove the case in the manner in which they are alleged to have been caused. It is elementary where the prosecution has a definite and positive case, it must prove the whole of that case;
- I) In a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such situation.

**13.** Keeping in mind the above rationale as laid down by the Hon'ble Apex

Court, I am constrained to hold that the evidence adduced by the prosecution in

support of its case is nothing shorter than mere conjectures and suspicion.

14. In view of the above evidence on record, discussion held based on

established principles of law and also upon hearing the learned counsel for the

parties, I hold that the prosecution miserably failed to prove the charge under

Section 294/354 IPC as well as under Section 11 of The Protection of Children From

Sexual Offences Act, 2012, against accused Jeherul @ Sanidul Islam beyond all

reasonable doubt and the accused is liable to be acquitted.

Consequently, the charge under Section 294/354 IPC as well as under

Section 11 of The Protection of Children From Sexual Offences Act, 2012, is held to

be not proved against the accused Jeherul @ Sanidul Islam beyond all reasonable

doubt. Accordingly, the accused is found entitled to get benefit of doubt for which

the accused namely Jeherul @ Sanidul Islam is acquitted under benefit of doubt.

**15.** In the result, accused **Jeherul @ Sanidul Islam** is **acquitted** of the

charge under Section 294/354 IPC as well as under Section 11 of The Protection of

Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt

and he is set at liberty forthwith. Bail bonds stands discharged.

**16.** Given under my hand and seal of this Court on this **1st day of** 

October, 2019.

Sd/-

Special Judge, Barpeta.

Typed by me

(Kavery Das, Stenographer)

### APPENDIX

## (A) Prosecution witnesses:

P.W.1 = Babida Parbin, the victim,

P.W.2 = Sahnaz Parbin,

P.W.3 = Akkesh Ali,

P.W.4 = Kabir Hussain,

P.W.5 = Sukur Mahmud,

P.W.6 = Dr. Abdul Baten, the M.O., P.W.7 = Mwblik Brahma, the I.O.,

(B) **Prosecution Exhibits**:

Ext.1 = Ejahar,

Ext.1(1) = Signature of PW1/victim,

Ext.1(2) = Signature of O/C Tarun Ch. Boro,

Ext.2 = Statement u/s 164 of CrPC,

Ext.2(1) & 2(2) = Signature of PW1/victim,

Ext.3 & 4 = Medical reports

Ext.3(1) & 4(1) = Signature of PW6/M.O.,

Ext.5 = Sketch map,

Ext.5(1) = Signature of PW7/I.O.,

Ext.6 = Charge Sheet,

Ext.6(1) = Signature of PW7/I.O.

- (C) **<u>Defence witnesses</u>**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) Court witnesses: Nil
- (F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.