IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 60 of 2017 U/S 10 of POCSO Act 2012 (Arising out of Sonari P.S. Case No. 211/2017)

State of Assam

-Vs-

Sri Kedar Nath Sah Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Zakir Hussain, Advocate

Date of framing Charge : 03.05.2018
Dates of Evidence : 11.07.2018
Date of Argument : 11.07.2018
Date of Judgment : 11.07.2018

JUDGMENT

- 1. Prosecution case, in brief, is that on 08.09.2017, informant Sri Prakash Bhuyan lodged an FIR with O/C, Sonari P.S. alleging, inter alia, that on 05.09.2017, while his sister victim 'F' (name withheld), aged about 14 years and a student of Class-VIII was in Borahi M.E. School, accused Kedar Nath Sah, who is a Hindi teacher of said Borahi M.E. School misbehaved the victim in the kitchen of the school.
- 2. On receipt of the FIR, Sonari P.S. Case No. 211/2017, U/S 12 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. During investigation, accused was enlarged on pre arrest bail.

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 12 of POCSO Act, 2012.
- 4. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 03.05.2018, charge U/S 10 of POCSO Act, 2012 has been framed against the above named accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses including the victim and the informant.
- 5. Considering the nature of the evidence of victim and informant, examination of accused u/s 313 Cr.P.C is dispensed with.
- I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Zakir Hussain, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINT FOR DETERMINATION IS

7. Whether on 05.09.2017, accused committed aggravated sexual assault on the victim 'F'?

DECISION AND REASONS THEREOF

- 8. P.W. 1 Sri Prakash Bhuyan, the informant and elder brother of the victim in his evidence deposed that on 05.09.2017, while he returned home, his sister victim 'F', who is a student of Class-IX at Borahi M.E. School and presently aged about 15 years told him that her teacher Kedar Nath Sah make joke with her at school and she dislikes said teacher. On this, out of anger, he lodged the FIR at Sonari P.S vide Exbt. 1. In his cross-examination, he admitted that he has no personal knowledge about the incident except as reported by the victim. He stated that he has filed this case after three days of the aleged incident i.e. on 08.09.2017. P.W.1 admitted that that victim 'F' did not complain him for any misbehave with her by the accused.
- 9. P.W. 2, the victim 'F' in her evidence while stating that her

present age is about 15 years, deposed that accused is known to her being Hindi teacher of Borahi M.E. School. Last year she was a student of Class-VIII at Borahi M.E. School. On 05.09.2017, on the teachers' day of celebrations, after returning home, she informed her brother (P.W.1) that she dislikes her teacher Kedar Nath Sah. On this, without asking her, her brother lodged the FIR at Sonari P.S. Subsequently ATSA people took her to Police Station. She got medically examined and gave her statement in court vide Exbt. 2. In her cross she admitted that accused did not misbehave her in school and she has given her statement in court on being tutored by ATSA boys.

- 10. P.W. 3 Smt. Sunita Bhuyan in her evidence deposed that after filing of the case, her husband told her that he has filed a case against Kedar Nath Sah but she did not ask her husband as to why he filed the case.
- 11. From the evidence of P.W.1, P.W. 2 and P.W.3 it is seen that none of them deposed anything against the accused implicating him with the alleged offence of sexual assault. From the evidence of P.W. 1 it appears that out of anger he lodged the FIR against the accused. P.W. 1 and PW 2 clearly stated that accused did not misbehave the victim in any manner. P.W. 2 informed her brother (P.W.1) that she dislikes her teacher Kedar Nath Sah. On this, without asking PW 1 lodged the FIR at Sonari P.S. Though in Exbt. 2 statement the victim implicated the accused with some allegations of sexual assault, but in her cross victim has categorically admitted that she has given her statement in court on being tutored by ATSA boys. P.W. 2 the victim is totally silent regarding any incident of sexual assault or even of sexual harassment by the accused in her evidence in courtbnn.
- 12. Considering above, I am of the opinion that prosecution has failed to prove the ingredients of offence U/S 10 of POCSO Act or any other minor offences against the accused Kedar Nath Sah. As such, accused Sri Kedar Nath Sah is acquitted from the charges U/S 10 of POCSO Act, 2012 and set at liberty forthwith.

- 13. Bail bond executed by the accused and his surety stand extended for another six months from today U/S 437-A Cr.P.C.
- 14. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357-A Cr.P.C.
- 15. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 16. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 11th day of July 2018 Sivasagar.

Special Judge, Sivasagar:

APPENDIX

- 1. Prosecution witnesses:
 - P.W.1 Sri Prakash Bhuyan (Informant)
 - P.W.2 Victim 'F'
 - P.W.3 Smt. Sunita Bhuyan
- 2. Defence witnesses None
- 3. Court witnesses None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 164 Cr.P.C. statement of the victim 'F'

Special Judge, <u>Sivasagar</u>: