

**IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.**

**Present:** **Shri S. Das, A.J.S.,**  
**Special Judge,**  
**Dhemaji,**

**JUDGMENT IN SPECIAL (POCSO) CASE NO. 6(DH) 2018.**

**U/s 8 of POCSO Act R/W Sec. 354 of I.P.C.**

(G.R.Case No.878/2017 (slp); Silapathar P.S. Case No.341/2017 U/S 8 of  
 POCSO Act)

**The State of Assam**

- Versus -

**Shri Tuladhar Hazarika,** .....Accused Person  
 S/O Balibor Hazarika,  
 R/O Gai-Nadi,  
 P.S. Silapathar,  
 Dist.- Dhemaji.

**Appearance:**

Shri A. Fogla, Public Prosecutor .....For the State  
 Smt. Beauty Phukan, Advocate .....For the Accused  
 (Legal-Aid Counsel)

**Dates of prosecution evidence :** 09-10-2018, 3-11-2018, 30-11-2018,

18-01-2019 and 28-02-2019.

**Date of argument** : **22-05-2019.**

**Date of Judgment** : **04-06-2019.**

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## JUDGMENT

1. The prosecution case in brief is that on 16-09-2017 complainant- Smt. Matu Chutia, W/O Shri Sushil Chutia, R/O Gai-Nadi, P.S. Silapathar, District-Dhemaji, lodged an ejahar with Sissiborgaon Police Out Post under Silapathar Police Station alleging interalia that on 25-09-2017 at about 9 A.M. in the morning the accused-Tuladhar Hazarika called her minor daughter-Smti 'X' (real Name is withheld) aged about 10 years to his house to bring broom and then the accused gagged her mouth inside his house and grabbed her. As it was school time, she (complainant) went to the house of the accused and saw the accused in such a grabbing condition and raised hue and cry and then the accused left his home. It is alleged in the ejahar that on 26-09-2017 at about 10 AM the accused came to his house and then her family members and other villagers apprehended the accused and informed the Police.
2. On receipt of the ejaha, In-Charge of Sissiborgaon Police Out Post made G.D. Entry vide No.242 dated 16-09-2017 and forwarded the same to O/C, Silapathar Police Station for registering a case under appropriate sections of law and I/C himself took investigation of the case. Accordingly, on receipt of the said ejahar, O/C, Silapathar Police Station registered a case vide Silapathar P.S. Case No. 341/2017 Under Section- 8 of the POCSO Act. On completion of investigation police submitted Charge-sheet against the accused-Shri TuladharHazarikla u/s 8 of POCSO Act.
3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 8 of POCSO Act read with Sec. 354 of IPC and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 8 witnesses. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of total denial. However, defence declined to adduce evidence in support of the plea.

  
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**4. Points for determination :**

(1) That, on 15-09-2017 at about 9 AM at Gai-Nadi under Silapathar Police Station, you committed sexual assault; touching the breast of Smt. 'X', a minor girl aged about 10 years inside your house and thereby you committed an offence punishable u/s 8 of POCSO Act.

(2) That you, on the same day, time and place you used criminal force to Smt. 'X', a minor girl aged about 10 years, intending to outrage her modesty inside your house and thereby you committed an offence punishable u/s 354 of IPC.

5. I have gone through the evidence on record and heard arguments of both sides.

**Discussion of Evidence :**

6. **PW1** Smti 'X' stated that the complainant Ma-tu Chutia is her mother. She knows the accused Tuladhar Hazarika. The occurrence took place about one year back. She reads in Gaideori LP School in class IV. On the date of occurrence she went to accused- Tuladhar Hazarika's house to bring a broom as she had to take it to her school as handicraft item. When she reached the house of the accused, he dragged her inside his house and gagged her mouth and then he touched her breast and also grabbed her from behind and he was pressing something hard on her back. At that moment her mother arrived there and then the accused released her. She came back home with her mother. At home she told her mother that the accused physically abused her in the manner stated above. Her mother lodged complaint before police. Police produced her before Magistrate and she gave statement before Magistrate. She was also medically examined. Ext.1 is the statement u/s 164 Cr.PC. and Ext.1(1) and Ext.1(2) are her signatures therein.

In cross-examination PW1 denied the defence suggestion that she has deposed as tutored by her mother. She also denied that accused did not drag

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her inside his house. She denied that the accused did not gag her mouth. It is denied that the accused did not touch her breast and did not grab from behind. It is also denied that the accused was not pressing something hard on her back. She also denied the defence suggestion that at that time her mother did not arrive there and accused released her.

7. **PW2** Smti Ma-tu Chutia stated that she is the complainant. She knows the accused Tuladhar Hazarika. Victim Smt.'X' is her daughter. The occurrence took place about one year back. On the date of occurrence her daughter went to accused's house to bring a broom as she has to take it to her school as handicraft item. At the time of occurrence she went to river to wash clothes. After finishing washing of clothes she came back home. She did not find her daughter at home and then she looked for her here and there and she arrived at the accused's house. When she reached hisr house, she found that her daughter was inside the house of the accused and she was in the grip of the accused and she saw that you were pressing her daughter's breast. She raised alarm and then accused released her daughter and ran away. She came back home with her daughter. She told the villagers about the incident and discussed the matter. Next day the villagers caught the accused and accused was handed over to police. She lodged complaint at the Police Station. Ext.2 is the ejajhar. She put her thumb impression in Ext.2.

In cross-examination PW2 stated that accused lived alone in his house. She denied the defence suggestion that she has falsely stated that accused grabbed her daughter and he also molested her daughter by pressing her breast. She denied that she told falsely to the villagers that accused molested her daughter. She denied that she falsely stated that accused ran away from his house. It is also denied that accused did not molest her daughter.

8. **PW3** Smti Dapun Chutia stated that she knows the complainant as well as the accused Tuladhar Hazarika. She also knows the victim Smti 'X'.

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The incident took place one year back. She heard that accused physically abused the victim girl who is aged about 12 years.

In cross-examination PW3 denied the defence suggestion that she had not heard that the accused physically abused the victim.

9. **PW4** Smt. Dhanaki Chutia stated that the complainant is her daughter-in-law. She knows the accused Tuladhar Hazarika. Victim is her granddaughter. The incident took place one year back. Her daughter-in-law told her that the accused physically abused her granddaughter. At the time of incident her granddaughter was aged about 10 years.

In cross-examination PW4 denied the defence suggestion that her daughter-in-law had not told her that the accused physically abused her daughter.

10. **PW5** Smti Jonali Hazarika stated that she know the complainant as well as the accused Tuladar Hazarika. She also knows the victim Smt. 'X'. The occurrence took place about 1 (one) year back. She heard that accused physically abused the victim.

In cross-examination PW5 denied the defence suggestion that he had not heard that the accused physically abused the victim.

11. **PW6** Smt. Phul Bhuyan stated that she knows the complainant as well as the accused. She also knows the victim Smt. 'X'. The occurrence took place about 1 (one) year back. She heard that the accused was involved in abusing a girl.

This witness was not cross-examined by defence.

12. **PW7** Dr. Pranabjyoti Dutta stated that on 18-09-2017 he was posted at Dhemaji Civil Hospital as Senior M&HO. On that day on police requisition vide SBGN OP GDE No.242 dated 16-09-2017 he examined the victim Smt. 'X', age about 10 years, female. She was identified and escorted by WHG Ritamoni Handique. On examination he found as follows:

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### Short History:-

Alleged history of sexual assault on 15-09-2017.

### Detail of Medical Examination:-

No external injury seen.

Breast are poorly developed/no injury seen.

Pubic hair and axillary hair are not developed.

Vulva vagina poorly developed.

Hymen intact/no injury seen.

### On investigation:-

1. Urine for HCG- Negative
2. Age of the person is above 9 years and below 15 years.
3. Perineal swab for spermatozoa- Nil
4. USG of pelvic organ – No visible sign of conception at the time of examination.

**Impression:-** At the time of examination no sign of forceful sexual intercourse found. The age of the lady is above 9 years and below 15 years.

Ext.3 is the Medico legal report and Ext.3(1) is his signature. Ext.4 is ultrasonography report and Ext.4(1) is the signature of Dr. B . Kuli (Radiologist) which he knows. Ext.5 is vaginal swab examination/urine examination report and Ext.5(1) is the signature of Dr. Jatindra Moran which is known to him. Ext.6 is pregnancy test report. Ext.7 is Radiology report and Ext.7(1) is the signature of Dr. B. Kuli which is known to him.

Defence side declined to cross-examination the Doctor.

13. **PW8** Nirmal Biswas stated that on 16-09-2017 he was posted at Sissiborgaon OP as I/C. On that day he received an ejahar from Smt. Matu

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Chutia. In the said ejahar it is stated that on 15-09-2017 the accused-Tuladhar Hazarika sexually abused complainant's daughter Smt. 'X' at his house. When the complainant came to Tuladhar's house and saw the incident the accused fled away. Victim's family members and the neighboring people apprehended the accused and then lodged complaint. On receipt of the ejahar, he made GD Entry Vide No.242 dated 16-09-2017 and sent the original copy of ejahr to OC Silapathar for registering a case. Accordingly, a case being Silapathar PS Case No.341/2017 u/s 8 of POCSO Act registered and he was entrusted with the investigation. He got the victim medically examined. He visited the PO and drew sketch map. He recorded statement of the witnesses u/s 161 Cr.PC. He arrested the accused and sent the accused to Judicial Custody. He produced the victim before Magistrate and recorded her statement u/s 164 Cr.PC. He collected the medical report of the victim. After completion of investigation he filed charge sheet against the accused u/s 8 of POCSO Act. Ext.8 is GD Entry and Ext.8(1) is his signature. Ext.9 is the sketch map and Ext.9(1) is his signature. Ext.10 is the charge-sheet and Ext.10(1) is his signature. Ext.2 is ejahar and Ext.2(1) is his signature with note. Complainant put her thumb impression in the ejahar.

Defence side declined to cross-examination PW8.

#### Appreciation of Evidence :

14. From the discussion of the evidence on record it appears that victim has been examined as PW1. The victim is aged about 10 years and at the relevant time she was reading at Class IV. According to victim on the date of occurrence at school time she went to the house of accused to bring a broom as she had to take it to her school as handicraft item. She stated that when she reached accused's house he gagged her mouth , touch her breast from behind and he pressed something heard on her back. At that moment victim's mother came and accused released her. PW2 is mother of the victim corroborated PW1 stating that on the relevant date PW1 had gone to

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accused's house to bring a broom and she (PW2) went to river to wash clothes. After washing of clothes she came back home and looked for her daughter and then came to the house of accused and saw the accused physically abused her daughter by pressing her breast. PW3, PW4, PW5 and PW6 stated that they heard about the incident that accused physically abused PW1. The IO on receipt of ejahar registered a case and recorded statement of witnesses and victim and he also produced the victim before magistrate and she also gave statement before magistrate u/s 164 Cr.PC and got her medically examined and collected report.

15. Perused the statement of the victim u/s 164 Cr.PC. The victim stated that on the relevant date on the morning she was at the veranda of her house and then the accused called her to his house and physically abused her by pressing her breast.

16. On consideration of the evidence on record it is found that there are contradiction and discrepancies in the evidence of the victim and her mother PW2. PW1 and PW2 both claimed that PW2 went to the PO and saw the accused grabbing PW1. But PW1 in her statement u/s 164 Cr.PC did not make mention of her mother going to the house of the accused and witnessing the incident. In view of what has been noticed above I find that evidence of the PW2 is not acceptable as regards her statement that she witnessed the incident. Defence during cross examination suggested that false evidence has been given as regards physical abuse by the accused on the victim. Defence also put suggestion to PW1 that her mother did not arrive at the PO.

17. In the instant case it is found from the materials on record that the victim girl is aged about 10 years as stated in the ejahar and stated by victim herself and as per medical report Ext.7 the age of the victim is above 9 years and below 15 years. So palpably victim is a minor.

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18. However having considered the materials on record in its entirety. I find that there are major contradiction in the evidence of the vital witness PW1 and PW2 and I find it difficult to act upon their evidence as their evidence do not inspire confidence.
19. In view of the above I find that prosecution has failed to prove offence u/s 354 IPC and R/W section 8 of POCSO Act against the accused beyond all reasonable doubt.

**O R D E R:**

20. I find the accused **Tuladhar Hazarika** not guilty u/s 354 IPC and R/W section 8 of POCSO Act. Accordingly, he is acquitted of the charge leveled against him. Set him at liberty forthwith.
21. Judgment is pronounced in open Court.
22. Given under my hand and seal of this Court on this the **4<sup>th</sup> day of June/2019.**

*S/41612019*  
( S. Das )  
Special Judge,  
Dhemaji.