IN THE COURT OF SPECIAL JUDGE ::::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 5 of 2017, U/S 8 of POCSO Act 2012 (Arising out of Sivasagar P.S. Case No. 72/2017)

State of Assam

-Vs-

Sri Bicky Kr. Jha Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Sanjay Sharma, Advocate

Date of framing Charge : 06.02.2017

Dates of Evidence : 20.06.2017, 19.09.2017, 02.01.2018

 Date of S/D
 :
 02.02.2018

 Date of Argument
 :
 03.04.2018

 Date of Judgment
 :
 12.04.2018

JUDGMENT

- 1. Prosecution case, in brief, is that on 23.01.2017 Smt. Sunu Das lodged an FIR with O/C, Sivasagar Police Station alleging, inter alia, that on 22.01.2017, at about 3.00 p.m., she came to know that her daughter victim 'P' (name withheld), aged about 13 years was taken by accused Bicky Jha to roadside KALMU bushes with an intention to commit misdeed and by that time they were noticed by Sri Dilip Das and upon seeing him, the accused flew away from the said place.
- 2. On receipt of the FIR, Sivasagar P.S. Case No.72/2017, U/S 8 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 arrested and remanded to judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 8 of POCSO Act, 2012.
- On receipt of charge sheet, cognizance of offence was taken. Copy was furnished to him and after hearing both the sides, vide order dated 06.02.2017, charge U/S 8 of POCSO Act, 2012 has been framed against accused Bicky Kr. Jha to which he pleaded not guilty and claimed to stand trial. After framing of charge, accused was allowed to go on bail. During trial, prosecution has examined four witnesses including the victim, informant and I/O.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. Sanjay Sharma, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 6. (I) What was the age of the victim 'P' on the date of incident?
 - (II) Whether on 22.01.2017 victim 'P' was subjected to sexual assault by the accused?

DECISION AND REASONS THEREOF

7. PW-1 Smt. Sunu Das, the informant and mother of the victim, in her evidence deposed that while she was at my business place, Jone Das informed her that her husband has seen the accused in pulling the victim by holding her hands. On Knowing this, he informed the matter to her husband and meet her daughter. Victim told her that accused has pulled her by holding her hand to nearby banana orchid. On this matter, she lodged the FIR. Exbt. 1

is the FIR. At the relevant time victim was aged about 14 years was a student of class IX. Police seized age proof certificate of his daughter. Exbt. 2 is the certificate. In her cross-examination PW 1 admitted that she has not seen the incident on her own.

- 8. PW-2, the victim P in her evidence deposed that on the date of incident at about 2 pm, while she was returning home from the house of her cousin, she saw that accused was standing on the side of the road. On arriving near to him, accused hold her hand stated that he loves her. On her disclosing that she had no love filling for him, he dragged her to near KALMU Bushes and asked her give kiss to him. On her refusal, he laid her on ground. On this, she cried. On her cry, her uncle Dilip Das arrived there and saw her in laying condition. On asking, she narrated the incident to him. Her uncle has slapped the accused. Her aunt informed the matter to her mother. She also informed the matter to her parents. Police got her medically examined. She was also taken to Court, where she gave her statement. Exbt. 3 is the statement. Her date of Birth is 24.02.2004. At that time she was reading in class IX. In her cross-examination, PW 2 denied the defence suggestion that neither the asked her to give KISS and nor he pull her to bushes or laid her on ground. She saw the accused being resident of neighbouring residence. She also denied that while giving statement to police, she has not stated that accused asked her to give KISS. She also denied that she deposed falsely that accused asked for the kiss, pulled her to Kalmu Bushes by holding her hand and laid her on ground.
- 9. PW-3 Sri Dilip Hazarika, in his evidence deposed that on 22.01.2017 at about 3 PM while he was working in his orchard at Kunjan Ali Path, Sivasagar, he noticed that victim was coming with an unknown boy. Suddenly he saw that both of them entered in roadside jungle. On this he scolded the victim. On this they left the place separately. At evening hours, he informed the matter to mother of the victim. In his cross-examination he admitted that while he saw victim with the boy, he noticed that they were walking normally and might be hidden themselves on seeing him. He saw them

from a distance of about 100 meter. He scolded the victim on seeing her while hiding on his scolding immediately they came out of the jungle and left the place. Both of them went on opposite direction. He has not seen the boy in pulling Priyanka to jungle.

- 10. PW-4 Sri Bakul Bora, I/O of this case, in his evidence deposed that on taking charge of investigation, he went to the place of occurrence i.e. Kunjan Path bypass and drawn a sketch map of the PO. Exbt. 4 is the said sketch map. On 23.01.2017, victim was sent to Court for recording her statement u/s 164 Cr.P.C. During investigation, he collected the medical report and statement given by victim in court and seized school certificate of the victim. Exbt. 2 is the seizure list. As per school certificate the date of birth of the victim is 26.02.2004. Accused was arrested and forwarded to court. On completion of investigation, he has submitted charge sheet against the accused u/s 8 of POCSO Act. Exbt. 5 is the charge sheet. In his cross-examination he deposed that as per FIR, date of incident was 22.01.2017. FIR was filed on 23.01.2017. In the FIR, there was no mention about the cause of delay in lodging the FIR. The distance of Police station is about 3 KM from the place of occurrence. In the sketch map though, he mentioned about existence of local peoples, but he did not examine any of them. He denied that, case was not investigated properly and he submitted the charge sheet without proper material.
- 11. <u>Point No. I:</u> So far age of the victim is concerned, from the evidence on record it appears that on the date of incident as stated by P.W. 1, the victim was aged about 14 years and she was a student of Class-IX. The victim in her evidence deposed that her date of birth is 24.02.2004 and at the relevant time she was a student of Class-IX. I/O has deposed that as per school certificate the date of birth of the victim is 26.02.2004. The above evidence on age of the victim remains unchallenged. The alleged incident happened on 22.01.2017. As such, as per record, on the date of incident victim was aged about 13 years.

- 12. <u>Point No. II</u>: So far allegation of sexual assault on the victim 'P' is concerned, from the evidence of P.W. 3, admittedly an eye witness of the incident, it appears that he did not support the evidence of P.W. 2 about pulling her by the accused by holding her hand, demanding kiss by accused and laying her on the ground. P.W. 3, has noticed both of them from a close distance and categorically stated that he has seen the victim coming with an unknown boy and suddenly both of them entered in roadside jungle. The victim though stated that her uncle arrived there and saw her in laying condition also did not get any corroboration from P.W. 3.
- and victim were coming together, suddenly they were seen by the P.W. 3 and on seeing him both of them entered in roadside jungle and thereafter on his arrival both of them left the place on opposite direction. Thus the evidence of victim appears to be exaggerated on material point and did not get any support so far holding her hand, pulling her to roadside jungle and demanding for kiss by the accused and laying her on the ground. Thus her evidence appears to untrustworthy and cannot be relied upon for drawing presumption u/s 29 of Pocso Act. I found force in the submission of learned Advocate for the defence that out of their acquaintance, while victim was going on the road by talking with the accused, she was noticed by her uncle P.W. 3 and out of fear both of them got themselves hidden in roadside jungle and on being detected, the other part of the story was concocted to make out a case.
- 14. Considering the available materials on record, I am of the opinion that it is fit case where accused should be given the benefit of doubt, simply because mere going with a minor girl by the side of the road cannot be an offence under the provision of POCSO Act or any other law. Prosecution has failed to prove the allegations beyond reasonable doubt.
- 15. Considering all above, accused Bicky Kr. Jha is acquitted from the charge U/S 8 of POCSO Act, 2012 and set at liberty forthwith.

- 16. Bail bond executed by the accused and his surety are extended for another six months from today U/S 437-A Cr.P.C.
- 17. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 18. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 19. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 12th day of April 2018 Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Smt. Sunu Das (Informant)
 - P.W.2 (Victim)
 - P.W.3 Sri Dilip Hazarika
 - P.W.4 Sri Bakul Bora (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. Court witnesses None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Seizure list
 - Exbt.3 Statement of the victim recorded U/S 164 Cr.P.C.
 - Exbt.4 Sketch map
 - Exbt.5 Charge-Sheet

Special Judge, Sivasagar: