DISTRICT: KAMRUP (M), GUWAHATI

IN THE COURT OF THE SPECIAL JUDGE, KAMRUP (M) GUWAHATI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Sessions Case No. 71 of 2019

Under Section 10 of the POCSO Act

State of AssamComplainant

-Versus-

Shri Manoj Kalita ... Accused

Charge framed on : 31.08.2019

Evidence recorded on : 18.07.2019, 31.08.2019, 30.09.2019

Statements recorded on: 19.11.2019

Arguments heard on : 03.12.2019

Judgment delivered on: 17.12.2019

Advocates who appeared in this case are:

Smt. Deepa Bezbaruah, Ld. Special P.P., for the Prosecution.

Mr. Saifuddin Ahmed, Ld. Legal Aid Counsel for the accused.

JUDGEMENT

1. This case was registered on 01.10.2018, at Basistha Police Station, under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act"), based on a First Information Report (in short "the FIR") filed by one Mr. Shukar Uranw against accused Manoj Kalita.

- 2. The case of the prosecution, in brief, is that at the relevant time, the accused Manoj Kalita was the conductor of the school bus bearing registration No. AS-01-EC-1454, which was engaged in transporting the students of the Kendriya Vidyalaya, CRPF (G.C.), Nine Mile, Amerigog, Guwahati, Assam. During group counseling, the counselor of the School namely, Ms. Narcilina Kalita, came to know that the accused had been sexually assaulting and harassing the junior students of the School, who used to travel in the said school bus. Ms. Narcilina Kalita informed about the matter to the management committee of the school and the committee held an emergent meeting on 30.09.2018. In the said meeting, the committee decided to lodge a complaint about the matter with the police and accordingly, the committee lodged the FIR with the Basistha police station.
- **3.** Based on the F.I.R., the Officer-in-charge of the Basistha police station registered the Case No. 1270/2018, under Section 10 of the POCSO Act and entrusted Woman Sub-Inspector Smt. Deepmoni Dhinghia to investigate the case. Accordingly, she investigated the case.
- **4.** During the course of investigation, the investigating officer visited the place of occurrence and recorded statements of the some of the victim students and witnesses. The statements of some of the victim students were also recorded by the Magistrate under section 164 Cr.P.C. After completion of investigation, the investigating officer submitted charge sheet for an offence under Section 12 of the POCSO Act against the accused Manoj Kalita in this court as this Court has been designated as a Special Court for trying cases under the POCSO Act.
- **5.** During trial, a charge under section 10 of the POCSO Act was framed against the accused Manoj Kalita. When the contents of the charge were read over and explained to the accused person, he pleaded not guilty and claimed to be tried.
- **6.** The prosecution, in order to prove its case, examined ten witnesses. The accused did not examine any witness.

- **7.** In his examination under Section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations levelled against him are false and baseless.
- **8.** The point for determination in this case is:-

Whether in the year 2018, while working as the conductor in the school bus bearing registration No. AS-01/EC-1454, owned by Shri P. Rabha and engaged in transporting students of the Kendriya Vidyalaya, C.R.P.F. (G.C.), Nine Mile, Amerigog, Guwahati, Assam, the accused Manoj Kalita committed aggravated sexual assault on the minor students of the School, who were travelling by the said school bus generally, and specially the students namely, (1) Joysmita Bharali, aged about 15 years, (2) Kangkan Jyoti Das, aged about 14 years and (3) Himesh Nath, aged about 11 years and thereby, committed an offence punishable under section 10 of the POCSO Act?

If so, what punishment does he deserve?

DECISION AND REASONS THEREOF

- **9.** I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsel for both the sides, give my decision on the above point as follows:-
- **10.** PW-1 Shri Himesh Nath, a victim student has deposed that he was studying in Class-VII, in the Kendriya Vidyalaya. At the relevant time, he was studying in Class -VI. His house is situated at Kahilipara and he used to go to school in a school bus. The accused Manoj was the conductor of the said school bus. Whenever he used to board and get down from the bus, the accused used to touch his private parts. The accused used to touch the private parts of other girl and boy students also. The accused used to target the students up to Class-VIII but did not do so to the students of Class-IX and above as he did not dare to do so to the students of higher classes. The accused sexually abused him from class-I but, he ignored the same due to fear. When, he was studying in class-VI, their counseling madam asked them to give her in writing about the

problems they were facing in the school. Then he told about the act of the accused to her. He was taken to the court and his statement was recorded by the Magistrate. Ext. 1 is his said statement and Ext. 1(1) and Ext. 1(2) are his signatures therein.

- **11.** In the cross-examination, he has stated that he has come to the court with the teacher of the school. He has denied the suggestion that he has deposed as per the instructions of his school teacher.
- **12.** Thus, by cross-examining PW-1, defence has failed to bring out anything based on which it can be said that he was not telling the truth.
- **13**. PW-2 Smt. Joysmita Bharali, another victim student of the School, has deposed that she was studying in Class-XI in the Kendriya Vidyalaya. At the relevant time, she was studying in Class-X. Her house is situated at Kahilipara and she used go to school by a school bus. When, she was studying in Class-I, the accused Manoj was working as the conductor in the said school bus. She used to sit in the front seat. The accused Manoj used to look at her in a different manner. Gradually, he started to come near her and patting her. Thereafter, he started inserting his hand inside her shirt and caressing her breasts. He continued the same for three years. As she was not matured enough to understand the same, she did not react to his misdeed. Out of fear, she did not tell about the same to her parents. When she reached Class-IV, one of her friends started to seat near her and then the accused could no longer do such thing to her. But, the accused used to stare at her. The accused did not stop his act and did so to other junior students. Thereafter, the accused started to touch indecently one junior student namely, Bhaswati. He used to insert his hand on her private part and touch it. One day, while she was coming from the school, she saw that the accused was sitting outside and in the meantime, Bhaswati came out and the accused called her and took her in his lap and touched her private parts. She could not say anything to the accused as he always remained in drunken state. She also feared that if she says anything to him, even if he could not cause any harm to her, he might cause harm to Bhaswati. Therefore, she did not react. She also saw the accused touching the penis of one boy namely, Tanmoy, who was a student of Class-I or II. The accused also used to target a boy named Kankan. Kankan used to seat in the first row and taking advantage of the same, the accused used to touch his

penis. She also heard the students of lower classes telling that the accused used to show them pornography videos in his mobile phone. He used to take photographs of the girl students capturing their private parts by his mobile phone. He also used to take pictures of the lady teachers of their school. The accused used to threaten the students, whenever they speak loudly, for whatever reasons. The accused used to push the senior students to the back seat so that they could not see his criminal act. If the accused could not do such things to any student in a particular day, he used to get angry and attempted to assault the students. Her statement was recorded by the Magistrate. Ext.2 is her said statement and Ext. 2(1) is her signature therein.

- 14. In the cross-examination, she has denied the suggestion that the accused never indecently assaulted her. She has denied the suggestion that she has deposed as per the instruction of her teachers. She has denied the suggestion that she has deposed falsely.
- **15.** PW-3 Kankan Jyoti Das, another victim student has deposed that he was studying at the Kendriya Vidyalaya, situated at Nine Mile, Guwahati. His house is situated at Ajanta Path, Survey, Beltola. He goes to the school in a school bus. The accused Manoj was the handyman of the said school bus. From class-VII, when he returned home from the school, the accused Manoj used to touch his private parts inside the bus. The accused did the same for about three years. The accused used to tell them that in the USTM, beautiful and hot girls studies. He also used to tell them that the figures of their teachers are very sexy. He used to show him porn movies in his mobile phone. The accused also used to tell him that the breasts and the other private parts of the girl students are very big. The accused used to utter obscene words and used to show the breasts of the girl students to him and touched their breasts whenever he gets chance. The accused used to drink a lot and utter obscene words. His statement was recorded by the Magistrate. Ext.3 is his said statement. Ext.3 (1) is his signature therein.
- **16.** In the cross-examination, he has stated that he has come with his teachers. He has denied the suggestion that he has deposed as per the instruction of his teachers. He has denied the suggestion that he has deposed falsely.

- **17.** PW-4 Disha Das, another student of the Kendriya Vidyalaya has deposed that she was studying in Class- XI. At the relevant time, she was studying in Class- X. Her house is situated at Kahilipara and she goes go to school in a school bus. At the relevant time, the accused was the conductor of the said school bus. She has seen the accused touching the genital area of the junior students. The accused used to ask the students of Class-I and II to seat in the first row and whenever any senior student wanted to seat in the first row, he used to tell them to go to the last rows. Thereafter, he will touch the private parts of the student who sits in the first row. He was aggressive in nature and used to threaten the students. He used to keep a bamboo stick and used to threaten the students that he will beat them with that stick. He used to remain in a drunken state. He used to look at the senior girl students in most abusive manner but, did not touch them. She saw him taking a girl namely, Bhaswati on his lap and touching her genital. He used to keep the student namely, Tanmoy in the first seat and whenever Tanmoy gets down from the bus, he used to touch his groin area. She has seen all these things. If in a day, the accused could not touch the private parts of any student, he used to rebuke and threaten all the students. Her statement was recorded by the Magistrate. Ext.4 is her said statement. Ext.4 (1) is her signature therein.
- **18.** In the cross-examination, she has stated that she has came with her teachers. She has denied the suggestion that she has deposed as per the instruction of her teachers. She has denied the suggestion that she has deposed falsely.
- 19. PW-5 Shri Deepjyoti Das, another student of the Kendriya Vidyalaya has deposed that he was studying in Class- X. His house is situated at Kahilipara and he goes to school in a school bus. The accused Manoj was the handyman of their school bus. The accused is a drunkard. Under the influence of alcohol, the accused became violent and used to assault the junior students. He also saw the accused touching the private parts of the children of primary section. He used to make bad comments to the girl students of other educational institutions. He used to show naked video to his friend Kankan in his mobile phone. He used to touch the buttocks of the minor girl students. He used to make bad comments with sexual intent towards the lady teachers of

their school. His statement was recorded by the Magistrate. Ext. 5 is the said statement and Ext. 5(1) is his signature therein.

- **20.** In the cross-examination, he has stated that he has come with his teachers. He has denied the suggestion that he has deposed as per the instruction of his teachers.
- 21. PW-6 Shrestha Deb, a student of the Kendriya Vidyalaya, Nine Mile, has deposed that she was studying in Class- XII. At the relevant time, she was studying in Class XI. She used to go to school in a school bus. As she was the senior most students in the bus, she used to look after the other students. One day, she saw a junior student sitting in the backside of the bus. She asked the student to go to the front side as it is the senior students who sit in the backside. The name of the junior student was Disha. Disha told her that her parents had told her to sit in the back side. Then she asked her why her parents told her so. She then told her that the bus conductor Manoj Kalita used to touch her private parts. Then she told her teacher Narcilina about the matter. She also saw the accused Manoj touching the private parts of one Class-II student namely, Tanmoy, in the mirror. The accused Manoj also used to take the junior girl student namely, Bhaswati on his lap and touch her buttock in inappropriate manner. One boy namely, Kankan also told her that the accused did such things to him also and she also saw the accused Manoj Kalita touching the private parts of Kankan. Her statement was recorded by the Magistrate. Ext.6 is her statement and Ext.6(1) is her signature therein.
- 22. In the cross-examination, she has stated that she has come with her teachers. She has not discussed with her teacher what to depose in the Court. She has denied the suggestion that she did not tell the police in the same manner as she deposed in the court. She has denied the suggestion that she has not seen the accused touching the private parts of any students.
- **23.** PW-7 Smt. Narchilina Kalita has deposed that at the relevant time, she was working as Counselor in the Kendriya Vidyalaya, inside the CRPF campus, at Amerigog, for the students regarding their academic problems, psychological problems and career related issues. Last year, while she was taking a group counseling class of the Class-VI students, she asked the students to write down about any problem faced by them in a piece of paper without mentioning their

names. The students gave her in writing about the problems faced by them. One student mentioned about the conductor of the school bus touching his anus. As the problem was serious, she asked whoever has written the same to meet her personally. After a few days, a student namely, Himesh Nath, met her in her counseling room and told her that he has written the said note. Then she asked him to show her from the picture of the human body which part of his body the bus conductor had touched. Himesh then showed her the penis in the picture. Himesh also told her that the bus conductor namely, Manoj used to touch the private parts of many other students of the bus. Himesh requested her not to tell about the same to his parents or anybody else. She assured Himesh that he will not face any problem for disclosing the same to her but, she decided that the same was a serious matter and something has to be done to solve the same. Thereafter, she started taking separate counseling classes for students of different classes to make them aware about the same and told them that they may be subjected to such thing in the school bus also. Then several other students came to her and told her that the accused Manoj sexually harassed them too. One student of Class-X namely, Jayasmita Bharali told her that while she was reading in class-II, the accused Manoj used to touch her private parts. Some other students, namely, Disha Das, Shrestha Deb and others also told her that the accused used to target the students of lower classes in the guise of taking care of them. He used to take them in his lap, touched their cheeks and thereafter, touched their private parts. The victim students also told her that the accused specially targeted one class-IX student namely, Kankan Jyoti Das. They also told her that the accused used to show him some videos. Then she called Kankan Jyoti Das to her counseling room and asked him about the same. Kankan Jyoti Das first refused to cooperate with her but, when his friends persuaded him to disclose everything, he told her that the accused used to touch his private parts and show pornography videos in his mobile phone. Kankan Jyoti Das also told her that the accused used to make obscene comments directing the senior girl students. Kankan Jyoti Das also told her that when the accused sees any girl or woman going through the road, he used to make obscene comments about their body parts and also touched the thighs of the students sitting near him. Kankan Jyoti Das also told her that the accused Manoj also used to take pictures of the lady teachers waiting near the bus after the school hours and that he has even taken her picture and morphed the same and showed the same to him. There is an educational institution namely, University of Science and Technology, Meghalaya, near of their school. The school bus where Manoj worked used to transport students of the said institution also. Kankan Jyoti Das told her that the accused Manoj used to do the same thing to the students of the said institution also. Kankan Jyoti Das told her that he was afraid of Manoj as Manoj was a dangerous person and knows his house. Therefore, he feared that if the accused came to know about what he told her, the accused may cause harm to him. Kankan Jyoti Das's friend Deepjyoti Das told her that the accused used to consume alcohol and if in a day, he could not touch the private parts of any of the students, he became violent and behaved very rudely with the students. All the students requested her not to make the same public. But, she has decided that she had to take action for the same and took some time to persuade the victim students to cooperate with her. This took some time and ultimately, some of the victim students agreed to make the matter public and then she led them to the teacher in-charge of the sexual harassment committee namely, Smt. Pallavi Gogoi and they told her about the same. Then they called parents of the victim students and took their consent for lodging complaint about the same with the police. Thereafter, a meeting was held in the school and the meeting was attended by seven teachers including her and the vice-principal of the school presided over the said meeting as the principal was on leave. In the meeting, they decided to lodge FIR against the accused and the vice-principal namely, Mr. Shukar Uranw lodged a written compliant with the Basistha Police Station. The Vice-Principal Mr. Shukar Uranw has since retired and has gone to his native place which is not known to her. She can identify his signature as she worked with him and was present in the aforesaid meeting and has also signed in the complaint along with others teachers present. Ext. 7 is the said complaint (four sheets) and Ext. 7(1) is her signature therein. Ext. 7 (2) is the signature of the vice-principal namely, Mr. Shukar Uranw, which she can identify. Her statement was recorded by the Magistrate. Ext. 8 is her said statement and Ext. 8 (1) and Ext. 8 (2) are her signatures therein.

24. In the cross-examination, she has stated that she never travelled in the school bus where the accused Manoj worked as the conductor. She has not personally seen the accused sexually harassing or assaulting any student. When Kankan Jyoti Das told her that the accused have even taken her photograph

and morphed the same to something else, she was totally shocked. She did not know the accused before. She has denied the suggestion that out of anguish, they have filed this case against the accused. She has denied the suggestion that she did not tell the investigating officer in the same way as she has deposed.

- 25. PW-8 Smt. Pallavi Gogoi has deposed that she has been working a Post-Graduate teacher of the English subject in the Kendriya Vidyalaya, inside the CRPF campus, at Amerigog, Nine Mile, Guwahati. In the month of September, 2018, their counselor namely, Narcilina Kalita told her that one student namely, Himesh has given her in writing in a counseling class that the bus conductor of a school bus namely, Manoj used to touch the private parts of the students. She then asked her to enquire whether Manoj has sexually harassed other students also. After a few days, she told her that Manoj has sexually harassed some other students also. She told her that Manoj used to sexually harass the students of different classes. She spoke with two of the victim students and they corroborated the same. Then they spoke to a few parents also and they told them that they were not aware about the situation. A few parents told them that their wards told them that the conductor used to touche their private parts playfully and did not understand the gravity of the offence. She then took legal advice from her friends and as per their advice, they convened a meeting of the school committee and the meeting was attended by seven teachers, including her. The vice-principal of the school presided over the meeting as the principal was on leave. In the meeting, they decided to lodge an FIR against Manoj with the police and lodged the Ext.7 FIR (four sheets), with the Basistha police station. Ext.7 (3) is her signature therein. Her statement was recorded by the Magistrate. Ext.9 is her statement and Ext.9(1) is her signature therein.
- 26. In the cross-examination, she has stated that she never travelled in the school bus where the accused Manoj was working as the conductor. She has not personally seen the accused sexually harassing or assaulting any student. She normally teaches the students of Class-XI and XII. Their counselor Narcilina Kalita has investigated the entire matter. She has denied the suggestion that based on the information provided by Narcilina Kalita only, they had lodged the FIR with the police.

- 27. PW-9 Shri Saptarshi Majumder has deposed that since 2013, he has been working as a Post-Graduate teacher of English subject in the Kendriya Vidyalaya, inside the CRPF Campus, at Amerigog, Nine Mile, Guwahati. On 29.09.2018, a meeting was called in their school to discuss about a serious matter. Seven teachers attended the meeting and in the said meeting, he came to know that a case of sexual misconduct has happened in which some students were victimized by the bus conductor Manoj Kalita of a particular school bus of their school. The meeting was presided over by the Vice-Principal, who was the in-charge of their school at that time. In that meeting, the school counselor Miss Narcilina Kalita told them that some students had confided to her that the bus conductor Manoj Kalita has been sexually abusing the students. She also showed them the written statements given by the students to her. After that, the committee members decided that the same should be informed to the police. Accordingly, a report was prepared on 29.09.2018. However, the next day being Sunday, the report was e-mailed to the Basistha Police Station from the School e-mail ID on 01.20.2018. Ext-7 is the said complaint (four sheets) and Ext-7(4) is his signature therein. The investigating officer recorded his statement.
- **28.** In the cross-examination, he has stated that he never travelled in the school bus where the accused Manoj worked as the conductor. He has not personally seen the accused sexually harassing or assaulting any student. He has denied the suggestion that he has deposed as per the information received form Narchilina Kalita.
- **29.** PW-10 Smt. Deepmoni Dhinghia, the investigating officer is merely a formal witness of the case. By cross-examining the investigating officer, defence failed to bring out any contradiction or omission in the testimonies of the prosecution witnesses to shake the prosecution case.
- **30.** As can be seen from the testimonies of the prosecution witnesses discussed above, the accused has committed sexual assault on the PW-1, PW-2 and PW-3 and some other students of the Kendriya Vidyalaya. At the relevant time, the PW-1 was a child below 12 years of age and the other victim students were child below 18 years of age. Therefore, the sexual assault committed by the accused becomes aggravated sexual assault as per the definition of the

"sexual assault" given in Section 9 (I) and (m) of the POCSO Act, which is punishable under Section 10 of the POCSO Act.

31. By cross-examining the prosecution witnesses, the defence has failed to bring out anything based on which it can be said that they were not telling the truth. Defence also could not prove that the prosecution witnesses have previous enmity with the accused person. Therefore, the testimonies of the prosecution witnesses must be accepted to be true. In the case of Manoj Kumar vs. The State Of Uttarakhand, reported in (2019) 5 SCC 667, the Hon'ble Supreme Court has held as follows:-

"11. In the absence of any existing enmity between the accused and the witnesses there exists no ground to question the veracity of the witnesses or to raise a ground of false implication..."

- **32.** In the instant case, the defence did not even suggest to the prosecution witnesses that they had previous enmity with the accused. Therefore, the question falsely implicating the accused by them does not arise.
- **33.** For the purpose of this case, Section 9 of the POCSO Act is relevant and the relevant portion of Section 9 of the POCSO Act reads as follows:-

9. Aggravated sexual assault-

(I) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years;

- **34.** The scope of the provision of Section 9 crystal clear. Hence, the Section does not require further elucidation. Section 10 is the penal provision for Section 9 which reads as follows:-
- 10. Punishment for aggravated sexual assault- Whoever, commits aggravated sexual assault shall be punished with imprisonment of

either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

- Act, it should be proved by the prosecution that on the date of the commission of the crime, the victim was a child. The term "child" has been defined in Section 2(d) of the POCSO Act, which states that child means any person below the age of 18 years. Thus, for the purpose of any offence under the POCSO Act, on the date of commission of the alleged crime, the age of the victim should be proved to be below 18 years. In the instant case, as can be seen from the above discussion, all the victim students were child less than 18 years of age and the victim student PW-1 was a child of less than 12 years of age. The accused did not even challenge the victim students in the cross-examination that on the day of the alleged occurrence, they were not child of less than 18 and 12 years of age. Therefore, the accused must be held guilty of committing the offence punishable under Section 10 of the POCSO Act.
- **36.** Regarding culpable mental state of the accused, Section 30 of the POSCO Act is relevant, which reads as follows:
- 37. "30. Presumption of culpable mental state.-(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".
- **38.** In the instant case, the accused is not a first offender as he has been committing the sexual assault upon the students of the Kendirya Vidyalaya since long back. Further, the accused did not rebut the said presumption by adducing any evidence and the evidence on record does not prove his innocence. Therefore, I hold that the accused Manoj Kalita had culpable mental state while sexually assaulting the victim students of the Kendirya Vidyalaya.

Apart from the same, the presumption of guilt under Section 29 of the POCSO Act must be applied to the case as all the necessary facts regarding commission of the offence under the POSCO Act have been proved by the prosecution. The said presumption also has not been rebutted by the accused by adducing any evidence and the evidence on record does not prove his innocence.

- **39.** In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has succeeded in bringing home the charge under Section 10 of the POCSO Act against the accused Manoj Kalita beyond all reasonable. Hence, I hold the accused Manoj Kalita guilty of committing an offence under Section 10 of the POCSO Act and convict him under the said section of law. The point is decided in the affirmative, accordingly.
- **40.** The crime against children has been increasing day by day and to deal with such crimes, the Parliament has to enact a special statute like the POCSO Act and the object and reasons of enacting the POCSO Act is to protect the children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Court for trial of such offences and for matters connected therewith or incidental thereto.
- In the case of **State of A.P. v. Bodem Sundara Rao**, reported in (1995) 6 SCC 230: AIR 1996 SC 530, dealing with a case of reduction of sentence from 10 years R.I. to 4 years R.I. by the High Court in the case of rape of a girl aged between 13 and 14 years, the Hon'ble Supreme Court has observed as follows:

"In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the

society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane." The sentence was accordingly enhanced to 7 years R.I. in the said case.

- **42.** As the convict Manoj Kalita has committed aggravated sexual assault on several students of the Kendiya Vidyalaya, I do not think it proper to give the accused the benefit of the ameliorative relief as envisaged under the Probation of the Offenders Act.
- **43.** Heard the convict Manoj Kalita on the question of sentence. He has pleaded leniency in awarding the punishment.
- 44. In the case of **CHANDER SINGH Vs. STATE**, reported in (2016) 2 Crimes 792, in a case under Section 8 of the POCSO Act, the Hon'ble Delhi High Court has held as follows:-
- "20. Consequently, the conviction of Chander Singh is altered to one for offence defined under Section 7 and punishable under Section 8 of POCSO Act. The punishment for sexual assault prescribed under Section 8 is imprisonment for not less than 3 years which may extend up to 5 years and to pay fine as well. The conduct of Chander Singh in sexually assaulting a deaf and dumb girl who was not in a position to protect herself fully warrants maximum punishment. Consequently, the order on sentence of Chander Singh is altered and modified. Chander Singh is directed to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 10,000/- in default whereof to undergo simple imprisonment for a period of 1 month."
- 45. The convict Manoj Kalita has stated that he is a first offender and is the sole bread earner of his family. Therefore, he has prayed for punishing him leniently. But, as can be seen from the discussion made above, the convict Manoj Kalita is not a first offender as he has been committing the sexual assault upon the students of the Kendirya Vidyalaya since long back. Therefore, I do not think it proper to punish the convict Manoj Kalita leniently. Deterrent punishment is his just deserts.

ORDER

- **46.** Considering the entire facts and circumstances of the case, I sentence the convict Manoj Kalita to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/- (Rupees ten thousands) only, in default to undergo rigorous imprisonment for three months, for committing offence under Section 10 of POCSO Act, which in my considered opinion, will meet the ends of justice in this case. The period of detention already undergone by the convict during investigation and trial shall be set off from the sentence of imprisonment. Issue Jail warrant.
- **47.** Furnish a copy of the judgment to the convict Manoj Kalita free of cost, immediately.
- **48.** Signed, sealed and delivered in the open Court on this the 17th day of December, 2019 in Guwahati.

(Shri A. Chaakravarty)
Special Judge,
Kamrup (M), Guwahati

Dictated by me

(Shri A. Chakravarty)
Special Judge,
Kamrup (M), Guwahati

APPENDIX

A. Prosecution Witnesses:-

- 1. PW-1: Shri Himesh Nath
- 2. PW-2: Smt. Joysmita Bharali
- 3. PW-3: Shri Kankan Jyoti Das
- 4. PW-4: Smt. Disha Das
- 5. PW-5 : Shri Deepjyoti Das
- 6. PW-6: Smt. Shrestha Deb
- 7. PW-7: Smt. Narcilina Kalita
- 8. PW-8 : Smt. Pallavi Gogoi
- 9. PW-9: Shri Saptarshi Majumder
- 10. PW-10: Smt. Deepmoni Dhinghia

B. Prosecution Exhibits:-

- 1. Ext-1: Statement of PW-1 recorded under section 164 Cr.P.C.
- 2. Ext-2: Statement of PW-2 recorded under section 164 Cr.P.C.
- 3. Ext-3: Statement of PW-3 recorded under section 164 Cr.P.C.
- 4. Ext-4: Statement of PW-4 recorded under section 164 Cr.P.C.
- 5. Ext-5: Statement of PW-5 recorded under section 164 Cr.P.C.
- 6. Ext-6: Statement of PW-6 recorded under section 164 Cr.P.C.
- 7. Ext-7: Complaint/FIR.
- 8. Ext-8: Statement of PW-7 recorded under section 164 Cr.P.C.
- 9. Ext-9: Statement of PW-8 recorded under section 164 Cr.P.C.
- 10. Ext-10: Sketch Map
- 11. Ext-11: Charge-sheet

(Shri A.Chakravarty)
Special Judge, Kamrup (M)
Guwahati, Assam