# IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.40 of 2019

(U/S 341 IPC and Sec. 8 and 12 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam	Compl	ainant	

-Versus-

Tapan Kumar Das......Accused person.

Charge framed on:-.....11/9/19

P.Ws. examined on:-.....25/11/19

Argument heard on:- ......25/11/19.

Judgment pronounced and delivered on:-.....25/11/19.

#### <u>Counsel Appeared:</u>

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr.A.K.Ray, Ld.advocate.

### <u>JUDGMENT</u>

1. The prosecution case, in brief, is that the informant Khirendra Chandra Das lodged an FIR with the O/C Katigorah P.S. stating the facts that on 29.06.19 at about 6-30 p.m. while the minor daughter of the informant was going to the house of Biresh Chandra Das, uncle of the informant, on the way the accused person pulled her hands and took her on the way of river and thereafter the accused tried to outrage her modesty. On hearing cry the wife of the informant went there and rescued

the victim.

- 2. On receipt of the FIR, a regular PS case was registered vide Katigorah P.S. Case No.421/19 U/S 341/354 IPC r/w section.12 of POCSO Act. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The victim girl was also sent to SMCH, Silchar for medical examination. The investigating officer visited the place of occurrence and prepared a rough sketch map. He also recorded statement of the witnesses and subsequently after completion of investigation submitted charge sheet against accused persons U/S 341/354(A) IPC read with Section 12 of POCSO Act.
- 3. The offence u/s Sec.12 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial by this court. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 341 IPC and Section 8 and 12 of POCSO Act was framed by this court against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether the accused person on 29.06.2019 at about 6-30 p.m. wrongfully restrained the victim on the way, as alleged ?
- (2) Whether the accused person committed sexual assault upon the victim, as alleged ?
- (3) Whether the accused person committed sexual harassment upon the victim, as alleged ?

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- 5. During trial, prosecution side examined two witnesses i.e, the victim and informant as PW.1 and PW.2. As per submission of Id. P.P. the evidence of the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with. Defence declined to adduce any evidence.
- 6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

#### **DISCUSSIONS, DECISIONS AND REASONS THERE-OF**

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in point for determination.
- 8. PW.1 is the victim who is the prime witness of this case and she deposed in her deposition that about 3/4 months ago from the date of her deposition, the occurrence took place. On that day, there was a puja in the house of sister of her father which she attended and the accused was also present there. She further deposed that while she was about to return at about 6/6.30 PM from the said puja at that time the accused slapped her and told her to stay there till completion of the puja. She further more deposed that as the accused slapped her, she reported the matter to her father who later lodged this FIR. She also deposed that police took her to SMCH for her medical examination and thereafter to Court wherein her statement U/S 164 Cr.P.C. was recorded.

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In her cross examination she stated that the accused is her uncle. She further stated in her cross examination that when she was brought to the Court several people of the locality including her family members were also came with her and she gave her statement on the basis of their advice. She categorically stated in her cross examination that the instant proceeding was started due to misunderstanding of facts..

9. The informant Khirendra Chandra Das was examined as PW.2. He deposed in his deposition that about 3 months ago, at about 6/6.30 PM his victim daughter went to the house of his uncle Biresh Chandra Das to attend Satsanga Puja. He further deposed that while he returned from his duty victim told him that the accused slapped on her face. Thereafter, PW.2 lodged an FIR with the Katigorah PS. Ext. 2 is the FIR wherein Ext. 2(1) is his signature. He further deposed that police had seized the original birth certificate and thereafter police kept photocopy of the same and returned the original birth certificate on zimma. Ext. 3 is the seizure list wherein Ext. 3(1) is his signature. He also deposed that the age of the victim was 13/14 at the time of occurrence.

In his cross examination the informant PW.2 stated he got the FIR written by a villager and he cannot remember his name and that the contents of the Ext. 1, the FIR was not read over to PW.2. He further stated in his cross examination that he lodged the FIR due to misunderstanding of facts and he has no grievances against the accused.

10. So, from the evidence of prime witnesses i.e. the victim PW.1 and the informant PW.2 it appears that they did not at all implicate the accused person in the alleged offence of crime U/S 341 IPC and Sec. 8 and 12 of POCSO Act. Rather, both of them in their cross examination

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admitted that the instant case was lodged due to misunderstanding of facts.

- 11. Upon consideration of all the above aspects, I hold that the prosecution has miserably failed to prove its case U/S 341 IPC and Sec.8 and 12 of POCSO Act against accused person –Tapan Kumar Das.
- 12. In view of the above, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith. Bail bond stands discharged.

 $\mbox{ Judgment is pronounced and delivered in the open court} \\ \mbox{ on this the $25^{th}$ day of November, 2019.}$ 

Dictated and corrected by

Stenographer

Special Judge, Special Judge, Cachar, Silchar. Cachar, Silchar. Transcribed by K. Bhattacharjee,

# IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 40 of 2019.

## **APPENDIX**

- (A) PROSECUTION WITNESSES: -
- P.W. 1 victim
- P.W. 2 Khirendra Ch.Das
- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: -
- Ext.1 Statement
- Ext. 2 FIR
- Ext.3 Seizure list.
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge,

Cachar, Silchar.