

**IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI**

**Special (POCSO) (T-1) Case No. 13/2018.**

(Under Section10 of the POCSO Act)

**State**

**Versus**

Akash Nath ..... Accused.

**PRESENT :- Shri D. Bhattacharjee,**  
**Special Judge, Hailakandi.**

**Appearance and particulars :-**

For the State	:- Sri U.K. Das, Ld. Public Prosecutor.
For the accused person	:- Sri K.U. Laskar, Ld. Advocate.
Date of recording evidence	:- 28.8.2018, 5.10.2018, 4.12.2018, 19.1.2019.
Date of recording statement u/s 313, CrPC	:- 01.02.2019.
Date of Argument	:- 20.02.2019.
Date of Judgment	:- 05.03.2019.

**JUDGMENT**

**1.** The prosecution case, in brief, is that on 10.06.2018 the informant Kalyani Mazumder, Principal of Aaka-Shekha Art School, Lala, lodged an ejahar with the Officer-in-charge, Lala Police Station alleging that on the same day at about 2 PM the accused person Akash Nath, a Teacher of the Aaka-Shekha Art School, with evil intention caught the hand of the victim (name withheld), aged about 12 years, in the class room and dragged her forcefully.

**2.** On receipt of the ejahar, the same was registered as Lala P.S. Case No. 223/2018 under Sec. 10 of the POCSO Act, 2012 and during investigation,

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police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC, arrested the accused person and forwarded him to the court and after completion of investigation submitted charge sheet against the accused person Akash Nath under Sec. 10 of the POCSO Act.

**3.** On appearance of accused person Akash Nath, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.

**4.** After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charge has been framed against the accused person Akash Nath under Sec. 10 of the POCSO Act. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

**5.** In the instant case, the prosecution has examined 6 Nos. of PW including Medical Officer and Investigating Officer. The accused person was examined under Sec. 313, CrPC, wherein he denied all the allegations levelled against him by the prosecution witnesses and further stated that the relevant time, he was working as a teacher at Aka Sekha Arts School and on 10.6.2018 he was imparting arts to the victim in the said school. He has further stated that the Principal of Aaka Sekha Arts School was not paying his salary since last one year before the incident and he made repeated demand for his salary but paid no heed to his demand, thereafter on the relevant day, he pressurized the Principal to release his salary, to which the Principal replied that on the next day, she would clear the arrear money and thereafter, he started proceeding towards his home and when he boarded a bus at Hailakandi Bus stand, some people attacked him for no reason and therefore, he realized that the Principal has engineered the case only to get rid of

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the money payable to him. The defence did not adduce any evidence.

6. Heard argument of both sides. Perused the record.

**POINT FOR DETERMINATION**

Whether the accused person on 10.06.2018 at about 2 P.M. in his school at B.T. Road, Lala, being a Teacher, committed aggravated sexual assault on his student viz. the victim aged 12 years and thereby committed an offence punishable under Section 10 of the POCSO Act, 2012?

**DISCUSSION, DECISION AND REASONS THEREOF**

7. Before entering into the merits of the case, at the very outset, it is apposite to go through the evidence available on record and therefore, the relevant evidence adduced by the prosecution witnesses has been reproduced below:-

The PW. 1, the victim, has deposed that on 10.6.2018 she and her friend Sukanya Nath were in the class room of Aaka Shekha Art School. The Principal was present in the Art school in a different room. At that time, the accused appeared in the class and asked her friend Sukanya to leave the room saying that Sukanya is too much talkative girl. Thereafter, Sukanya went out of the class room. While she was drawing art, the accused came near her and was coming close to her, she also was shifting herself maintaining a distance from the accused. Then the accused asked her as to why she was going far from him and thereafter, the accused touched her chest and she forcefully moved his hand from her body. Then, the accused asked her to promise that she would not disclose the same to anybody and by saying the same, the accused left the room. Thereafter, she went to her house and narrated the entire incident to her parents and also informed the same to the Principal over telephone. The Principal lodged the FIR. Police got her medically

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examined and also her statement was recorded by Magistrate under Sec. 164, CrPC vide Ext. 1. Police seized her birth certificate vide Ext. 2.

In cross examination, she has stated that at the relevant time, she was a student of Class Adya in the Art school. There are 10 classes in the school. In the first floor of the building, her class room is situated. There are 4 rooms in the first floor. Some of the guardians take their children to the school. The school building is situated to the North-South direction. The northern room is the last room of first floor where her class was held. In front of her class, there are benches on which guardians sit. In every Sunday, classes are being held. There are total 3 teachers in the school. She does not know the residence of the accused as well as the Principal and other teachers. The room in which teachers sit and the room in which she was sitting are intervened by another room. The Art School starts at 12 Noon and ends by 2 P.M. Before she reached her home, she did not disclose about the incident to anybody. On the relevant day, after the incident she went to her home and thereafter, she did not come to school again.

8. The PW-2, Smt. Kalyani Mazumder, Principal of the Aka Shekha Academy, has deposed that on 10.06.2018 it was Sunday and on that day, the victim came to Art School and after the school was over, the victim left for her home. On the same day at about 3 P.M., victim again came with her father and uncle to the school and reported her that while she was in the class room alone, the accused caught her hand and touched her chest. Thereafter, she (PW-2) took them to the police station and she (PW-2) lodged the FIR vide Ext.-3. After the incident, she discharged the accused from her academy.

In cross examination, she has stated that the accused was working in the academy since two years before the incident. The students attend school along with their guardians. At the relevant, there were 4 teachers including her. She knows the residence of the victim. She lodged the FIR after meeting the

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victim. At about 3/3:30 P.M. the victim came to her and she lodged the FIR at about 6:30 P.M. The FIR was scribed as per her version. In the FIR she mentioned that the accused with evil intention touched the victim but she did not state specifically that the accused touched the chest of victim. On the relevant day, the accused as usual after the school was getting over, left for his house. She has further stated that when the victim reported her about the incident, there were 2 other teachers also present and they are Ritu Agarwal and Biswajit. There was no any allegation against the accused prior to the incident.

**9.** The PW-3, Sri Pankaj Deb has deposed that he knows the accused Akash Nath as well as the informant Kalyani Mazumder. On 10.06.2018 at about 2 P.M. his niece (victim) returned home from Art School namely Aka Shekha Academy and was crying and told his sister i.e. victim's mother that the accused touched her chest with bad intention which his sister informed him over phone. Thereafter, he along with others went to school and talked to the Principal. They started searching the accused but did not find him in the school. Then they came to Hailakandi Town and found the accused in a vehicle near S.S. College, Hailakandi. They apprehended the accused and handed over him to Lala P.S. At the relevant time, the victim was 12 years old and was student of Class-VI.

In cross examination, he has stated that he did not see the occurrence. When they came to school, the father of the victim talked to the principal and he along with others were searching the accused. The victim identified the accused to them. The father of accused lodged a case against him and others after the incident.

**10.** The PW-4, Sri Debasish Sen has deposed that he is a teacher of Aka Shekha Academy and the accused also was a teacher of the said Academy. On 10.06.2018 at about 2 P.M. he was in a class room and was teaching art to the students. In another room, the accused was also teaching art. On that day at about

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2:30 P.M. the principal informed him that the accused did some bad acts with a girl student. He also heard that the accused touched the chest of the student in a class room.

In cross examination, he has stated that when he joined the school as a teacher, he found the accused working in the school as a teacher. Except principal, there were other two teachers in the school. There was another person who is a student-cum-teacher. He did not see the incident. The guardians remain outside the school gate. There is no security in the gate. There is a bench in the veranda of Adya Class. He went to the police station along with the principal. He never heard anything about bad character of the accused.

**11.** The PW-5, Dr. Rehana Begum has deposed that on 12.06.2018 she examined the victim at Civil Hospital, Hailakandi and no mark of violence over her body and as per birth certificate, the age of the victim is 12 years. The victim gave history of touching her breast.

**12.** The PW-6, Investigating Officer has deposed that he investigated the case and during investigation, he got the victim medically examined and also got her statement recorded by Magistrate under Section 164 of Cr.P.C. He also collected the birth certificate of victim, according to which, the date of birth of victim is 01.04.2006. He prepared the rough sketch map of the place of occurrence vide Ext.-6. After completion of investigation, he submitted charge sheet against the accused under Section 10 of POCSO Act.

In cross examination, he has stated that the victim party brought the accused to the police station. He did not verify the genuineness of the birth certificate of the victim. He has further stated that the PW-1 (victim) did not state before him that the accused touched her chest and then she applied force to shift his hand. The PW-2 did not state in the FIR that the victim left the Academy for

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her home and after sometime, she (victim) along with her father and uncle came to her and reported about the incident. In the FIR it is also not mentioned that the accused touched the chest of victim. The PW-2 did not state before him that the accused touched the chest of victim.

**13.** In the backdrop of above evidence of prosecution witnesses, it is appeared that the PW-2 is the victim and she is the only witness upon whose testimony, the fate of the entire case depends. Since the allegation against the accused is under POCSO Act, at the very outset, it is to be determined as to what was the age of the victim at the relevant point of time of occurrence. The victim in her evidence has stated that her present age is 13 years. From the Ext.-4, medical report, it is revealed that the doctor opined on the basis of birth certificate, the age of the victim as 12 years. The PW-6, Investigating Officer has deposed that during investigation he collected birth certificate of the victim and according to which, the date of birth of victim is 01.04.2006. The Ext.-2, birth certificate of the victim discloses her date of birth as 01.04.2006. The age of the victim was not disputed by the defence and therefore, there is no difficulty to hold the view that at the relevant time, the victim was aged about 13 years.

**14.** The PW-1, the Principal of the Arts School is the informant of the case where the incident occurred. The accused was a teacher of the said school at the relevant time, which he himself admitted in his statement under Section 313 of Cr.P.C. and during the relevant point of time he was teaching Art to the student.

**15.** The victim has deposed that she learns Art in the said school. The PW-2, Principal of the Arts School has testified that on Sunday the Arts School is being held. The date of occurrence i.e. on 10.06.2018, it was Sunday.

**16.** From the evidence as reproduced above, it is appeared that the victim herself is the only eye witness to the occurrence. It is a settled proposition

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of law that in cases involving sexual harassment, molestation, etc., the court is duty-bound to deal with such cases with utmost sensitivity. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The statement of the prosecutrix is more reliable than that of any injured witness as she is not an accomplice. (*Ref: State of Punjab v. Gurmit Singh, reported as (1996) 2 SCC 384*). Thus, a conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. (*Ref: Vishnu (alias) Undrya v. State of Maharashtra reported as (2006) 1 SCC 283; State of M.P v. Dayal Sahu, reported as (2005) 8 SCC 122*)).

**17.** From the evidence of PW-1 (victim) it is found that on 10.06.2018, she and her friend Sukanya Nath were in the Arts School and while they were in their class room, their teacher viz. the accused appeared there and asked Sukanya to leave the room and accordingly, in compliance with the direction of teacher, Sukanya left the room. Thereafter, the accused came close to the victim and touched her chest and the victim by applying her force moved his hand from her body. Then the accused left the room saying her not to disclose the same to anybody. The victim in her statement under Section 164 of Cr.P.C. vide Ext.-1 has also made the similar statement and stated that the accused put his hand on her chest. It is clearly discernible from her evidence that at the relevant time, she was alone in the class room as the accused ousted her only friend Sukanya from the class and as such, she is the sole witness to the occurrence. The credibility of her testimony has been tested and found that she is very much consistent and corroborative to the fact that the accused who is a teacher of Arts entered into her class room while she and her only friend Sukanya were sitting and made her friend to go outside and by taking advantage of her loneliness, the accused with evil intent came closer to her and touched her chest, to which she protested by moving his hand.

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**18.** The Ld. Defence counsel has submitted that the victim in her statement under Section 161 of Cr.P.C. did not state before police that the accused touched her chest and thereby she has exaggerated her earlier statement while adduced evidence. Therefore, it would not be safe to rely upon her evidence as there is every possibility of her being tutored.

The above contention of the Ld. Counsel for the defence is not found to be confidence inspiring because at the initial stage before police the victim a small child due to shyness might not have specifically stated that the accused touched her chest but at the earliest possible opportunity, when she was produced before Magistrate, she very specifically stated that the accused touched her chest.

**19.** The Ld. Counsel for the defence further submitted that according to victim, after the incident, she went to her home and narrated the entire incident to her parents but none of the parents was examined by the prosecution which is very much fatal to the prosecution case.

As discussed above, the evidence of victim is found highly credible and reliable and as such, non-examination of parents does not in any way affect the prosecution case. Further, the PW.3, the maternal uncle of the victim adduced evidence and stated that the victim reported the incident to her mother and on being identified by the victim they apprehended the accused when he boarded a bus. It is appeared from Ext.-7, charge sheet that the parents of the victim have not been cited as witness and this might be the reason for their non-examination. The evidence of victim clearly speaks that she was sexually assaulted by the accused, thus, due to lapses of investigating agency or any other State machinery, the victim must not be deprived of getting justice.

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**20.** The victim has testified that after the incident, she went to her house and narrated the entire incident to her parents. The PW-2, Principal of the

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School has deposed that after the class was over, the victim left for her home and on the same day at about 3 P.M. the victim again came with her father and uncle to the school and reported her that while she (victim) was in the class room, the accused caught her hand and touched her chest. Being a Principal of the school, the PW-2 in discharging her duty, took the victim to the police station and lodged the FIR. It is further revealed from the evidence of PW-2 that after the incident she discharged the accused from her school from the job of teacher. The evidence of victim (PW-1) and the evidence of Principal (PW-2) are also very much consistent and corroborative to the fact that after the incident, the victim went to her home and narrated the entire incident to her parents and thereafter, her guardian came to the school along with her and made complain against the accused of what he has done with the victim.

**21.** The defence plea is that the accused was not paid his salary for one year by the Principal and when he pressurized the Principal for releasing his arrear salary, the Principal has filed the false case against him using the victim.

The Principal herself is a female person, aged about 35 years and this being the position, if she had the intention to harass the accused by filing false case, she had that much advantage to file a case against the accused herself and for this purpose, she need not have used a child of 13 years. Further, there is nothing on record to show that the victim who is a 13 years old minor girl or her family members had any sort of enmity with the accused. It is very much available on the record that the victim even does not know the residence of accused. As discussed above, the victim is very much consistent and corroborative to her statement made under Section 164 of Cr.P.C. and her evidence before Court and as such, even there is no scope to doubt that the victim was tutored by anybody.

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**22.** In view of above discussions, it is safely arrived that the accused who is teacher of the Arts School, at the relevant time, getting the victim

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alone in the class room, sexually assaulted the victim by touching her chest and the said act of the accused comes within the definition of **aggravated sexual assault** in terms of Section 9(f) of POCSO Act, 2012.

**23.** Section 9(f) of the POCSO Act, 2012 reads as follows:-

**"Whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution..... is said to commit aggravated sexual assault."**

**24.** The definition of **sexual assault** is provided in Section 7 of POCSO Act, 2012 which is quoted below:-

**"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any act with sexual intent which involves physical contact without penetration is said to commit sexual assault."**

**25.** In the light of the above provisions of law, under the facts and circumstances of the case, this Court finds that the act of the accused squarely falls within the definition of aggravated sexual assault for which punishment is prescribed under Section 10 of POCSO Act, 2012.

**26.** Therefore, this Court is of the firm opinion that the prosecution is successfully able to prove its case against the accused person beyond all reasonable doubt and **accordingly, the accused person Akash Nath is convicted under Section 10 of POCSO Act, 2012.**

**27.** Heard the convict on the point of sentence. He has pleaded for clemency. He has stated that he is 22 years old and student of Degree 6<sup>th</sup> Semester. In the next month, he will appear the final examination. He has further stated that his detention in jail would spoil his life.

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- 28.** After hearing the convict on the point of sentence as well as the Ld. Defence counsel and considering the young age of accused, this Court is of the opinion that the following punishment would meet the ends of justice.

***The accused Akash Nath is sentenced to suffer simple imprisonment for 5 (five) years and to pay fine of Rs. 5,000/-, in default, he shall undergo further simple imprisonment for 2 (two) months under Section 10 of POCSO Act, 2012.***

- 29.** The fine if realized shall be paid to the victim. The period of detention already underwent by the accused shall be set off from the sentence.
- 30.** The bail bond of the accused stands discharged.
- 31.** Furnish a free copy of judgment to the convict immediately.
- 32.** Send a copy of this judgment to the District Magistrate, Hailakandi.
- 33.** The Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this Court on this the 5<sup>th</sup> day of March, 2019 at Hailakandi.

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Special Judge,  
SESSIONS JUDGE  
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Dictated and corrected by me:

  
Special Judge, Hailakandi.  
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Dictation is taken and transcribed by Samsher Bahadur, Stenographer  
Grade – III.

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**Appendix :-**

**Oral Evidences :-**

- PW-1, Victim.
- PW-2, Smt. Kalyani Mazumder.
- PW-3, Sri Pankaj Deb.
- PW-4, Sri Debasish Sen.
- PW-5, Dr. Rehana Begum.
- PW-6, Sri Bijay Roy.

**Documentary Evidences :-**

- Ext.-1, Statement of victim U/S 164 Cr.P.C.
- Ext.-2, Xerox copy of birth certificate.
- Ext.-3, FIR.
- Ext.-4, Medical report.
- Ext.-5, FIR Form.
- Ext.-6, Sketch map of the place of occurrence.
- Ext.-7, Charge sheet.

**Defence did not adduce any evidence.**

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