### **IN THE COURT OF THE SPECIAL JUDGE, BARPETA**

Special POCSO Case No.109 of 2018
(Arising out of Barpeta P.S. Case No.1103/2018
U/S 8 of PROTECTION OF CHILDREN FROM SEXUAL OFFENCE ACT, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on: - 24.04.2019

State of Assam

- Vs -

Sukham Krishna Das @ Sukham Das......Accused.

Date of Recording Evidence on – 120.05.2019, 30.05.2019, 14.06.2019 &

01.07.2019

Date of Hearing Argument on – 20.09.2019 Date of Delivering the Judgment on - 04.10.2019

# Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused-- Mr. Dharanidhar Talukdar, Ld Senior. Advocate.

## **JUDGMENT**

# **FACTS OF THE CASE**

1. The prosecution case, in brief, is that on 22.05.2018 one Dhruba Deka lodged an FIR in Barpeta police station alleging inter alia that his daughter (X) (real name withheld) has been reading in Class-IV in Shankardev Sisu Niketan, Barpeta. It is stated that on 21.05.2018 his daughter went to school but at the time of returning from school at about 2:20 pm accused, who is a Science Teacher stopped the students who got less mark on his Science subject and allowed other students to go except his daughter. Thereafter, he allegedly

touched her breast with ill motive but out of fear she left home without disclosing it to anyone. Returning home, she narrated her ordeal to her mother who then conveyed the same to him. Accordingly, he made phone call to the Secretary of the school and expressed surprise in the disgraceful conduct of accused that brings disrepute to the institution. Hence, the FIR, for taking appropriate action against accused to prevent recurrence of such incident in future.

#### **INVESTIGATION**

- 2. Following the information as above, Barpeta police station registered a case being Barpeta PS Case No.1103/18 u/s 8 of POCSO Act and entrusted S/I Sanjit Kr. Roy to investigate the case.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses u/s 161 Cr.P.C., sent the victim girl for medical examination, forwarded the victim to court for recording her statement before Magistrate u/s 164 Cr.P.C., drew sketch map. On conclusion of investigation, the I/O laid the charge sheet against accused u/s 8 of POCSO Act with a view to stand trial.

#### **APPEARANCE**

4. During the course of time, the then Hon'ble Special Judge, Barpeta vide order dated 04.12.2018 took cognizance of the offence u/s 8 of POCSO Act and issued process against accused person. On his appearance in court, the case record was forwarded to this court for disposal.

#### **CHARGE**

5. Having received the case record transfer and on careful perusal of the materials available on record and hearing the learned counsels having found a primafacie case, vide order dated 24.04.2019 framed charge u/s 8 of POCSO Act against accused Sukham Krishna Das @ Sukham Das. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial. Before that the provision of Section 207 Cr.P.C. has been duly complied with.

### **EVIDENCE**

6. During the course of trial, prosecution examined as many as 8 witnesses including the informant, the alleged victim girl, medical officer and the investigating officer.

## **EXAMINATION OF ACCUSED U/S 313 Cr.P.C.**

7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C

but accused denied the prosecution evidence as totally false, concocted and imaginary. On being asked, accused however, expressed his intention to adduce defence evidence. Accordingly, accused in order to substantiate his stand examined one witness namely-Keshabananda Ojah as Defence Witness.

# 8. Now point for determination ;-

1. Whether on 21.05.2018 at about 2:20 pm accused with sexual intent press/touches the breast of the victim girl (X) (real name withheld) in the school for getting less mark in Science subject which involves physical contact with the girl without penetration and thereby committed an offence u/s 8 of POCSO Act as alleged?

### 9. Discussion, Decision and reasons for such decision:-

I have heard the vociferous argument of the learned lawyers appearing for both sides.

10. The learned counsel appearing for the State Smti. P. Das strongly contended that in the present case, prosecution has been able to establish the case against accused for sustaining conviction u/s 8 of POCSO Act. According to the learned Addl. P.P., in order to substantiate the case prosecution examined as many as 8 witnesses including the informant, the alleged victim, the medical officer and the Investigating officer and all of them have very categorically and consistently stated that on the day of incident the accused subjected sexual torture on the victim girl by stopping her in the school alone, in the pretext of getting less mark on his Science subject and by, allowing the other students to leave the class, pressed the breast of the victim girl under her arms. This fact has been narrated by the victim girl not only in her evidence in court but also in her statement before Magistrate u/s 164 Cr.P.C. as well as in her statement before police u/s 161 Cr.P.C. The version of the victim girl has been fully corroborated by the evidence of PW-1, PW-2 who is the father and mother of the victim girl and also by PW-3 who is the independent witness and teacher of the school and also by medical evidence as the doctor at the time of her examination found mild tenderness below her left breast.

- 11. The learned counsel appearing for the accused person however, vehemently disputed the submission of the learned counsel appearing for the state. According to the learned defence counsel, the prosecution case is entirely based on falsehood. The alleged victim girl adduced exaggerated and concocted evidence in court as well as before the police on being tutored by her parents.
- 12. PW-1 Dhruba Deka and PW-2 Dharitri Deka the father and mother of the victim girl also adduced extremely exaggerated and concocted evidence only with a view to punish the accused to satisfy their personal grudge nurtured by them against the accused for punishing their daughter in school for getting less mark on his Science subject. According to the learned counsel it is a fact that accused being a Science teacher has been trying all along to improve the quality of students on his subject and award punishment to those students who under perform on his subject. In that spirit the accused gave little corporal punishment to all the students on his Science subject who got less than 20 marks on his Science subject. In the present case, the alleged victim girl got very less mark on his subject, so, accused gave punishment with a view to improve her quality along with other students.
- 13. Being highly aggrieved father of the victim girl filed the present case with concocted and imaginary allegations. According to learned defence counsel the fact that the case was based on falsehood has been proved by the evidence of PW-3 Prabin Nath, PW-5 Dola Devi and PW-6 Darathi Ojah. PW-5 Dola Devi and PW-6 Darathi Ojah being the classmate of the alleged victim girl deposed that on the day of incident the teacher punished all the students of their class who got less than 20 marks out of 25 on Science subject one by one by beating with scale, advising the students to farewell in the next exam, and, victim was the last to punish because she got less mark. Thereafter, school bell ring and they left the school. Both PW-5 and PW-6 have been cross examined by defence. PW-5 Dola Devi stated in her evidence that when they leave school victim told them that her father works in court, so, she will sent the teacher to jail with the help of her father for punishing her. PW-6 Darathi Ojah, in her cross examination deposed that victim was punished by teacher but did not touch the body of any students including the victim. The evidence of PW-4 and PW-5 have been supported by the evidence of PW-3 Prabin Nath who is one of the teacher of the said school. In his evidence PW-3 Prabin Nath

categorically stated that on 21.05.2018 the father of the victim girl made a phone call to him informing that the Science teacher touches the breast of his daughter in the school. Then he advised him to visit the school on the next day and give written complaint. Accordingly, on the next day morning parents of the victim girl had given a written complaint and the managing committee took up the matter and, after deliberation suspended the teacher from the school. Thereafter, the father of the victim girl also filed a case.

- 14. In his cross examination he however, stated that after the suspension of the teacher, students and guardians protested and then managing committee after inquiry reinstated the accused in his service. He deposed that the suspension of the teacher was made without making any independent inquiry. The learned defence counsel further contended that to substantiate this fact accused also examined one witness namely-Keshabananda Ojah, Secretary of the school as DW-1 who also categorically deposed that immediately after making independent inquiry, on the demand of the guardian and students, the suspension order of accused was withdrawn by a decision of the school managing committee signed by the President which is exhibited as Ext.BB.
- 15. In his cross examination he stated that based on complaint of informant Dhruba Deka accused was suspended on 22.05.2018 but the suspension was withdrawn immediately on 23.05.2018 after independent investigation and inquiry. Therefore, the learned defence counsel arduously contended that accused deserve to be acquitted from the charge u/s 8 of POCSO Act. He has been a victim of vindictive attitude of the informant. They used their minor daughter as a sward to punish an innocent person who has been trying his level best to improve the quality of the students on his Science subject by giving some corporal punishment to the students who gets less marks but unable to bear the punishment awarded to their ward, the informant filed the present case against accused on false and imaginary grounds which have, however, been discredited by own prosecution witnesses. Therefore, the learned defence counsel submitted that it is a fit case to record judgment of acquittal.
- 16. Having heard the arduous contention of the learned lawyers appearing for both sides, this court carefully and dispassionately examined the evidence of all the prosecution witnesses on record for arriving at a just decision in the case.
- 17. Before deliberating on the evidence it would be in the fitness of thing to refer to section 8 of POCSO Act.
- 18. <u>Section 8 punishment for sexual assault:</u> Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less then 3 years

but which may extent to 5 years and shall also be liable to fine. The punishment u/s 8 has been prescribed on the basis of acts defined in section 7 which reads as under:

- 19. Now, coming back to the facts of the present case and the evidence of the victim girl shows that the prosecution case is entirely based on the evidence of the prosecutrix. Therefore, the evidence of the victim and other prosecution witnesses has to be assessed on the touch stone of its credibility. The evidence of the victim girl shows that accused is taught Science in the school and he told all the students of the class that he will punish those students who will get less than 20 marks out of total 25 marks. So, on the date of alleged incident the teacher punished the students of his subject one by one who got less than 20 marks out of 25 marks and the victim girl was the last to punish. According to her, teacher had beaten her thrice with scale on her hand and thereafter, touches her breast twice behind her back by putting his hand under her arm and then asked her to give the phone number of her father so that he can talk to her father. Then he allowed her to leave the class. In the evening after her return from tuition class, she disclosed the fact to her mother who also told the same to her father. Then her father filed the case.
- 20. In her cross examination she stated that there were about 27 students in her class namely Darathi, Tonmoy, Nayandeep, Rupangona, Ria etc. According to her, Darathi, Tonmay, Nayandeep, Rupangona, Ria also got less mark so teacher got them stand up in the class room and punished one by one and after the incident she came home along with one lady teacher Juri who is her neighbour. Thereafter, she went to tuition which starts from 4 pm to 7 pm and during this time she did not disclose the incident to anyone but she did disclose the incident to her parents after her return from tuition.
- 21. Now, it is to be seen how far credible the evidence of the victim girl.
- 22. First she did not disclose the incident to the lady teacher with whom she came back home after the school was over. On reaching home also she did not disclose the fact to her mother. She then went to tuition from 4 pm to 7 pm and after that she disclose the incident to her mother. She however, did

not disclose the incident to any of her girl friend whom she met in tuition class. Prosecution examined two of her classmate Dola Devi as PW-5 and Darathi Ojah as PW-6. PW-5 Dola Devi and PW-6 Darathi Ojah also deposed that on the day of alleged incident the teacher punished students who got less than 20 marks on the Science subject out of 25 marks and the victim girl was the last to punish and when school ball ring they all leave the classroom. PW-5 Dola Devi in her cross examination stated that when they leave the school the victim girl (X) told her that she will put the teacher in jail as her father works in court. This particular expression of the victim girl expresses before her colleague Dola Devi bears great significance. From the evidence of the victim girl and two of her colleagues PW-4, PW-5 and PW-6 one thing is crystal clear that on the day of incident the teacher punished the students of his class who got less than 20 marks out of 25 marks in the Science subject. The evidence of PW-1 and PW-2 who are the parents of the victim girl also stated in their evidence that on the day of incident the teacher punished their daughter for getting less mark in his subject. But after the punishment he pressed her breast twice with force as deposed by PW-1 the father.

- 23. On the other hand, the mother PW-2 deposed that on the day of incident at about 8/9 pm she noticed that her daughter was weeping and on quarry made by her, she told that she was feeling pain on her breast. On intense questioning and examination she did not find any injury and her daughter also denied having suffered any injury but told her that her teacher punished the students of her class that day for getting less marks in his Science subject and thereafter, teacher pressed her breast twice while other students left. Hearing this she felt nervous and shared the same with her husband and after discussion filed the case. But mother of victim did not notice any abnormal conduct of behaviour of her daughter at the first instance when she reached home from school. This fact bears significance.
- 24. From the evidence of PW-1 and PW-2 the father and mother of the victim girl respectively it appears that they have adduced exaggerated evidence regarding the incident as the mother PW-2 clearly stated that on intense examination she found no injury on any part of the body of her daughter and did not notice any abnormal conduct of her daughter.
- 25. On the other hand, the doctor PW-7 who examined the victim on 23.05.2018 found mild tenderness below the left breast of the victim girl. In

her cross examination the doctor opined that there may be different reason for tenderness. Therefore, there appears no consistency with the evidence of the mother of the victim as well as the evidence of doctor PW-7. Had there been any truth in the allegation the victim ought to have disclosed the fact of incident to any of her colleague or lady teacher with whom she return home from school or to her mother but she did not disclose anything about the incident to any one of them. This raises great suspicion about the authenticity and truthfulness of the allegations made. This may be the result of afterthought to take revenge against the teacher for punishing their daughter for getting less mark in Science subject. For arguments sake, if it is assumed that out of cheer shame, the girl did not disclose the fact of pressing her breast by the teacher to her colleague or the lady teacher with whom she accompanied home after the school, but as a natural conduct she ought to have disclose the incident at least to her mother immediately after reaching home from school, but instead of disclosing the fact to her mother immediately, she went to tuition. It is only after her return from tuition she did not disclose the fact to her mother. But as deposed by PW-2 her mother, when she noticed that her daughter (victim girl) has been sitting remorse she came to know that teacher had beaten her for getting less mark and also told her that the teacher pressed her breast. The fact of pressing the breast of her daughter by teacher appears to have been exaggerated, concocted and afterthought in view of the fact that the victim girl did not disclose the fact to any one till 8/9 pm even though the alleged incident stated to have took place at about 2 to 2:20 pm in the school. Coming to know from the punishment meted out to their daughter by teacher the parents might have felt angry and plotted the incident to take revenge on the teacher. The circumstances in which the alleged incident took place it is unlikely that teacher can do so in the classroom against the alleged victim as none of her colleagues also said that except punishing the students nothing was done by the teacher/accused. The fact that as deposed by PW-3 Prabin Nath, Assistant Teacher of the school based on complaint lodged by parents of the victim girl accused/teacher was suspended from school. But the evidence of DW-1 Keshabananda Ojah shows that the suspension order was issued in haste, without any inquiry on the part of the school authority. According to DW-1 though the teacher was suspended on 22.05.2018 based on the FIR of the informant, PW-1 but after independent

inquiry on the demand of the guardian and students, the suspension order of the teacher/accused was withdrawn on 23.05.2018 immediately on the next day of the incident. This fact clearly shows that the suspension of the accused was without application of mind and without any inquiry. Had there been any truth in the allegation made, the teachers and students would not have protested against the suspension of accused from service but guardian and students supported the accused/teacher because of his positive stand taken for improving the quality of students in his class. The teacher giving corporal punishment to students to improve their quality and maintain discipline is not unusual incident. Moreover, this courts also do not find any accusing finger against the accused/teacher from any of the independent witnesses of the prosecution.

- 26. In the present case, the version of the victim girl has been supported only by her parents but not any single independent witnesses. Therefore, giving exaggerated and false evidence against the teacher to take revenge for punishing the victim girl in the class for getting less mark on Science subject cannot be ruled out. The victim girl being the minor the possibility of influencing her by her parents to adduce false evidence against the teacher also cannot be ruled out. There are two strong possible views in the present case. Therefore, this court, after assessing the entire prosecution evidence on record comes to this unerring conclusions particularly keeping in view the fact that none of the prosecution witnesses corroborated the version of PW-1, PW-2 and PW-4 namely the parents and the victim girl.
- 27. In this context, it is to be noted that the teacher committing the offence of sexual torture on his female student is also not an uncommon or unusual incident which is of course, happening in the society and the teacher indulging such acts is certainly reprehensible, despicable and punishable act under the law. But in the present case, on dispassionate examination of the evidence of the prosecution witnesses, this court found the evidence of the victim girl and her parents unworthy of credit for sustaining conviction without any corroboration from independent witnesses.
- 28. The evidence of I/O in his cross examination belies the evidence of PW-2 in court. The evidence of DW-1, also probabilises more of falsehood then of the alleged incident. As such, after dispassionate examination of the entire prosecution evidence on record, this court comes to unerring finding that it is

unsafe to hold the accused person guilty for the commission of offence u/s 8 of POCSO Act.

- 29. In the result, this court has no option but to acquit accused Sukham Krishna Das @ Sukham Das from the alleged offences u/s 8 of POSCO Act, 2012 on the ground of benefit of doubt and set him at liberty forthwith.
- 30. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided U/S 437(A) Cr.P.C.
- 31. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 32. Let the case record be consigned to record room after completing the formalities.
- 33. Given under my hand and seal of this Court on this 4th day of October 2019, at Barpeta.

Dictated & corrected my me

Sd/-(Sri C. B. Gogoi) Special Judge, Barpeta Sd/-(Sri C. B. Gogoi) Special Judge, Barpeta.

#### **APPENDIX**

- 1. The prosecution has examined the following 8 nos. of witnesses :-
- PW-1 = Dhruba Deka, the informant.
- PW-2 = Dharitri Deka.
- PW-3 = Prabin Nath.
- PW-4 = victim (X).
- PW-5 = Dola Devi.
- PW-6 = Darathi Ojah.
- PW-7 = Dr. Anima Boro, M/O.
- PW-8 Sanjit Kumar Ray, I/O.
- 2. The prosecution has exhibited following document :-
- Ext.1 = is the FIR.
- Ext.1(1) is the signature of informant.
- Ext.2= is the statement recorded before Magistrate u/s 164 Cr.P.C. of victim girl.
- Ext.2(1)= is the signature of the victim girl.
- Ext.3 = is the medical report.
- Ext.3(1)- is the signature of doctor Anima Boro.
- Ext.4= is the sketch map.
- Ext.4(1)= is the signature of I/O Sanjit Kr. Ray.
- Ext.5= is the charge sheet.
- Ext.5(1)= is the signature of I/O Rufu Chetia.
- Ext.A= is the application filed by Dhruba Deka.
- Ext.A(1)= is the signature of Principal Acharjee of the school Prabin Chandra Nath.
- Ext.AA= is the compared copy of the letter filed by Dhruba Deka.
- Ext.B= is the said withdrawal of suspension order.
- $\operatorname{Ext.B}(1)$ = is the signature of President Shankardev Sisu Niketon.
- Ext.BB= is the compared copy of the original of Ext.B.