IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR SPECIAL POCSO CASE NO. 79 of 2018

Under section 8 of POCSO Act of IPC.
(Arising out of Tezpur PS Case No. 1825/18)

State of Assam

-Vs-

Sri Gautam Upadhaya ... Accused Person

Present : Smti. I. Barman,AJS, Special Judge, Sonitpur, Tezpur.

For the State : Mr. M.C. Baruah,

Special Public Prosecutor

For the accused : Mr. B. Borah , Advocate

Date of Argument : 14-08-2019

Date of Judgment : 17-08 -2019.

JUDGMENT

The prosecution case against the accused person as projected in the FIR (Ext. 1), in brief, is that on 05-07-2016, when the victim aged about 14 years, was at home with her brother, her uncle Gautam Upadhaya enterd into their rented house and taking advantage of absence of her parents coming close to her asked her to kiss him on his lips. Then on being asking the accused for telling to do such thing, he came more close to her. Being scared to avoid him when she went to another room, the accused following her caught hold her hand and tried to kiss her. Then on raising alarm, the accused

ran away. It is further alleged that accused also threatened her not to disclose the incident to others.

- 2. On receipt of the FIR (**Ext.1**) on 02-09-2018 from the victim (PW 2), Tezpur P.S. Case No. 1825/2018 u/s 8 of POCSO Act was registered and launched investigation of the case. During investigation, the Investigating Officer recorded the statement of the witnesses, got recorded the statement of the victim u/s 164 Cr.P.C. and on completion of investigation having found materials, laid chargesheet against the accused Gautam Upadhaya u/s 8 of POCSO Act.
- **3.** On appearance of the accused person before this Court, after furnishing the copies of the documents as required u/s 207 of Cr.P.C. and having heard both parties, charge u/s 8 of POCSO Act was framed against the accused and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.
- **4.** To substantiate the case, prosecution examined as many as 4 witnesses. On closure of the prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. wherein the accused denied all the incriminating evidence and stated that as a relative he visited the house of the victim as usual without any bad intention but seeing him she shouted.
- **5.** I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.
- **6.** The point for decision in this case is that -
 - (1) "Whether the accused Sri Gautam Upadhaya on 05-07-2016 at village Rowmari under Tezpur Police Station committed sexual assault on the victim Miss "X", a minor girl aged about 14 years, and thereby committed an offence punishable under section 8 of POCSO Act?

- **7.** Mr. M. Baruah, the learned Special Public Prosecutor has submitted that the materials on record particularly the evidence of the female child victim undoubtedly project a case of sexual assault on the girl.
- **8.** Refuting the said argument, Mr. Borah the learned counsel appearing for the accused person has submitted that the delay in lodging the FIR coupled with the evidence of the victim, it cannot be inferred that a case of sexual assault or any case of sexual offence has been made out.

Reasons, Decisions and reason for decision.

- **9.** In order to appreciate the argument advanced on behalf o both sides, it is considered next to outline a sketch of the evidence on record.
- **10. PW 1** is the mother of the victim. She deposed that on 05-07-2016, at around 2/2.30 p.m. she went to hospital with her mother when her victim daughter and son were at home and at around 5 p.m. when she returned home, the victim told her that her husband's cousin brother Gautam Upadhaya coming to their house came close to her and sat near her on the sofa where she was sitting. Then she feeling uneasy went away from the sofa and thereafter, the accused also left her house.

During cross she stated that actually the accused did nothing to her daughter and after two years, the case was filed by her victim daughter.

- **11. PW 2** the victim testified that on the day of incident in the month of July, 2016, in the morning time, when she along with her younger brother were at home, accused Gautam Upadhaya came to their house and sat beside her in a sofa. As she felt uncomfortable, she went to the next room but the accused followed her. Then feeling embrrassing, she shouted on which the accused fled away. When her mother returned home, she reported the incident. She proved the FIR as Ext. 1 and her statement u/s 164 Cr.P.C. as Ext. 2.
- **12. PW 3,** the father of the victim stated that after one and half month of the incident, his wife reported him that one day when the accused Gautam

Upadhaya came to his house, their daughter shouted. He further stated that sometimes the accused visited his house.

13. PW 4, the landlord of the victim's father deposed that one day at around 1.30/2 p.m. when she was drying clothes in the back side of her house, she heard voice of the victim saying that she did not like those. As at that time the parents of the victim were not at home, thinking that victim picked up quarrel with her brother, she proceeded towards the rented house of PW 3 and at that time she had seen the back side of a boy in the gate going out from their premises. Lateron, victim's mother told her that accused Gautam Upadhaya misbehaved the victim girl.

During cross she stated that she had not seen the incident and as she had seen only the back side of the boy going out from the premises, hence, she could not recognise him.

14. In the case the evidence of the victim's father reveals that the accused is his cousin brother and sometimes the accused visited his house. The evidence of victim around whose revolves the whole prosecution story, reveals that on the day of incident the accused came to her house when her parents were not at home but her brother was present. The accused entering into her house sat beside her on the sofa where she was sitting, but then she being no ease proceeded to another room of the house. The accused also followed her. At this she feeling uncomfortable, when raised alarm, the accused left the place. There is no iota of evidence that the accused touched any part of her body or did any act with sexual intent. There is also no any evidence that the accused utter any word or gesture with sexual intention or did any act to come within the purview of sexual harassment. The evidence of the victim herself does not disclose any sort of sexual assault or sexual harassment on the victim girl. She herself stated that the accused did nothing except what she deposed before the court. The parents of the victim also remained silent regarding any act of sexual assault or sexual harassment on the victim girl. The victim only felt uneasy when the accused sat beside her in the sofa. As a relative he visited her house as earlier and set beside her. He did not came into physical contact with her. Moreover, the FIR itself reflects that incident occurred on 05-07-2016 whereas the FIR was lodged on 02-09-2018 i.e. after two years without explaining the inordinate delay in filing the FIR. This long delay creates doubt about the veracity of prosecution version.

- **15.** Considering the evidence of prosecution witnesses in totality particularly the evidence of the victim who is the most vital witness in this case and other surrounding circumstances as discussed above, it is clear that the allegation against the accused Gautam Upadhaya has not been established beyond all reasonable doubt and the accused is entitled to benefit of doubt.
- **16.** Accordingly, accused Gautam Upadhaya is acquitted on benefit of doubt from the charge u/s 8 of POCSO Act and set him at liberty forthwith. His bail bond shall remain in force till next six months.
- **17.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **17**th **day of August, 2019.**

(I.Barman) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(I.Barman) Special Judge, Sonitpur,Tezpur.

Prosecution witnesses.

1. PW 1 : mother of the victim

2. PW 2 : victim

3. PW 3 : father of the victim4. PW 4 : Smti Touram Upadhyaya.

Exhibits.

Ext. 1 : FIR

Ext. 2 : 164 Cr.P.C. statement of the victim

(I.Barman)
Special Judge,
SONITPUR: TEZPUR