

HEADING OF JUDGEMENT IN SPECIAL CASES:

DISTRICT: DHUBRI.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 30/2016

UNDER SECTIONS: 354-D/294/506 IPC

READ WITH SECTION 12 OF THE POCSO ACT.

STATE OF ASSAM

VS.

RAJU RAY

PRESENT:- DIPAK THAKURIA, B.A., LL.M., AJS

SPECIAL JUDGE,

DHUBRI.

APPEARANCES:-

B. R. BASUMATARI, SPECIAL P. P. FOR THE STATE.

M. C. NATH, ADV. FOR THE DEFENCE.

DATE(S) OF EVIDENCE:- 03-02-2017, 15-03-2017,

25-04-2017, 27-06-2017,

12-06-2018, 06-08-2018.

DATE OF ARGUMENT:- 29-09-2018.

DATE OF JUDGMENT :- 10-10-2018.

JUDGEMENT

- 1. Accused Raju Ray stands trial for the offences punishable under sections 354-D/294/506 IPC read with section 12 of the POCSO Act.**

- 2. The facts of the case, as revealed from the ejahar, in brief, are as follows:- that on 03-09-2016 at about 3.30 p.m. the 14 year old daughter of the complainant was going to**

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her tuition class at Dekdeki (Dhepdhepi) Girls' High School. On the road the accused indecently behaved her. The accused, thereafter, entered into the class room, compelled other students to go out of the class room and by using slang language rebuked her daughter and indecently touched her body. While her daughter raised alarm, the accused left the place threatening her to kill.

3. On the same day the complainant lodged a written ejahar at Golokganj police station where a case as Golokganj P. S. Case No. 876/2016 under section 12 of the POCSO Act was registered.
4. The investigating officer arrested the accused, produced him before the Court and the Court remanded him to judicial custody, recorded the statements of witnesses under section 161 Cr. P. C. By completing the investigation, I. O. has submitted charge sheet against the accused person to prosecute him under sections 354-D/294/506 IPC read with section 12 of POCSO Act.
5. During investigation the accused was released on bail.
6. Cognizance of the case was taken in charge sheeted sections. Copies were furnished to the accused and after hearing both the parties and perusal the case record and case diary formal charges against the accused under sections 354-D/294/506 IPC read with section 12 of POCSO Act were framed. Charges so framed were read over and explained to the accused which he pleaded not guilty and claimed to be tried.
7. The prosecution examined fourteen witnesses including investigating officer and closed the evidence.
8. After completion of the prosecution evidence, the statement of the accused was recorded u/s 313 Cr. P. C. by putting questions to him from all incriminating evidence appearing against him on record and thereby giving him an opportunity to meet the same. In response to which, the accused denied the allegations as well as evidence on record and also declined to adduce evidence in defence .
9. Heard learned counsels appearing for the parties and perused the evidence on record.



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FOLLOWING POINTS HAVE BEEN SET UP FOR DETERMINATION

Whether the accused on 03-09-2016 at about 3.30 p.m. on road near Dhepdhepi Girls' High School under Golokganj police station follows the minor daughter of the complainant to her classroom to foster personal interaction repeatedly despite a clear indication of disinterest by the girl and thereby accused is liable to be punished under section 354-D IPC?

Whether the accused on the same day time and place uttered obscene words to the minor daughter of the complainant in the public place and thereby accused is liable to be punished under section 294 IPC?

Whether the accused on the same day time and place criminally intimidated to the minor daughter of the complainant to kill her and thereby accused is liable to be punished under section 506 IPC?

Whether the accused on the same day time and place sexually harassed to the minor daughter of the complainant and thereby accused is liable to be punished under section 12 of the POCSO Act?

DISCUSSIONS ON THE POINTS FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASON:

10. In order to establish the charges framed against the accused, the prosecution has examined fourteen witnesses. Among them P. W. 1 is the complainant and the mother of the victim girl. P. W. 6 is the victim girl, P. W. 4 is the brother of the victim girl, P. W. 5 is the aunt of the victim girl, P. W. 11 is the cousin brother of the victim girl, P. W. 2 Prankrishna Ray, P. W. 3 Prakritish Ch. Ray, P. W. 7 Chandana Barman, P. W. 8 Karishma Ray, P. W. 10 Ramendra Nath Ray are independent witnesses. P. W. 9 Chandana Ray, P. W. 12 Uttam Kr. Ray and P. W. 13 Pradip Kr. Ray are the relatives of the accused and P. W. 14 Rustam Raj Brahma is the investigating officer.

11. The prosecution has exhibited the Ejahar as Ext. 1, two seizure lists as Ext. 2 and Ext. 3, sketch map of place of occurrence as Ext. 4 and charge sheet as Ext. 5.

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12. The defence examined none. Plea of the defence is total denial of the case.

13. Learned Special Public Prosecutor B. Basumatary has submitted that the prosecution examined all together 14 witnesses to establish the charges framed against the accused. The main witness for the prosecution is the minor girl who is just 14 year old. She has depicted entire story and her deposition has been corroborated by other independent witnesses. There is nothing to disbelieve the prosecution witnesses. The prosecution is able to establish the charges against the accused beyond all reasonable doubt. So, has prayed to hold the accused guilty under framed charges and impose adequate punishment to him.

14. On the other hand learned counsel appearing for the defence M. C. Nath has submitted that the accused being young boy just expressed his affair towards the alleged victim. His intention was not to disturb the victim girl. Though the prosecution claims that all the prosecution witnesses have supported the case of the prosecution; but some of the important independent witnesses have not supported the case of the prosecution. The evidences led by the prosecution are not sufficient to constitute the charges framed against the accused. The prosecution has failed to establish the charges against the accused beyond all reasonable doubts. So, the accused deserves benefit of doubt. Hence, has prayed to acquit the accused.

15. Before we proceed, let us reproduce the material parts of the witnesses examined by the prosecution during trial.

15.1 P. W. 1 is the complainant and the mother of the victim girl. Her deposition shows that on 03-09-2016 at about 3.30 p.m. her daughter was proceeding towards Dhepdhepi Girls' School for attending tutorial classes. On the road the accused abused her by uttering obscene words and followed her to the school. The accused entered into the class room of her daughter and blocked the door. Thereafter the accused pushed her daughter and threatened her not to disclose the same to them. A classmate of her daughter informed the matter to her eldest son about the incident by mobile phone. She and her elder son visited the school and brought her daughter back. On the same day she lodged ejahar which has been exhibited and marked as Ext. 1 and authenticated her signature thereon which is marked as Ext. 1 (1). In cross-examination she has deposed that one Prankrishna Ray informed about the incident to her eldest son. Her daughter told her that the accused abused her



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and followed her to her school and assaulted her inside the class room. She has denied the suggestion of the defence that she did not disclose before police that the accused abused her daughter, her daughter told her that accused blocked the door of her class room, pushed her down and threatened not to disclose the matter to them, that Prankrishna informed her eldest son about the incident.

- 15.2** Prankrishna Ray, P. W. 2, who was on the spot at the time of incident has deposed that on 03-09-2016 at about 3.30 p.m. he went to Dhepdhepi Girls' School for attending tutorial classes. As the teacher was not present; so he was sitting in the field of the school and saw both the accused and the victim arrived at the school. The victim was crying and while he asked what had happened then the accused told him that nothing had happened. Both of them entered into the room. The accused asked the victim as to why she afraid of him and consoled her not to cry. In cross-examination he has deposed that the accused and victim were talking. He has denied the suggestion of the defence that he did not disclose before investigating officer that victim was crying and accused was consoling her.
- 15.3** P. W. 3 Prakritish Ch. Ray is the head teacher of Dhepdhepi Girls' School. He has deposed that on 03-09-2016 at about 3.30 p.m. he went to his school to conduct tutorial classes. The victim told him that the accused abused her by uttering obscene words while she was coming to the school and also threatened her to kill by knocking her down by motorcycle if she disclosed the incident to anyone. The victim further told him that the accused followed her up to class room and pushed her to down and threatened her to face consequence if she disclosed the incident to anyone. When he reached the school the accused left the school premise and after some time the accused came back and went away. As per his direction Prankrishna Ray informed the matter to her family members. In cross-examination he has deposed that when he reached the school 15 students were present. After hearing about the incident from the victim girl he asked about the same to Prankrishna who told him the same thing. He has denied the suggestion of the defence that he did not tell the investigating officer that after some time the accused came back and went away and he did not ask Prankrishna to inform about the incident to the family members of the victim. The other students also told him about the same incident.



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- 15.4** P. W. 4 is the elder brother of the victim. He has deposed that on 03-09-2016 at about 3.30 p.m. one Dhananjay Ray informed him over mobile phone about the incident that a youth torturing his sister by uttering obscene words. He went to Dhepdhepi school and brought his sister back to his home.
- 15.5** P. W. 5 is the relative of the victim girl. She has deposed that on 03-09-2016 at about 3.30 p.m. she was going to Dhepdhepi school with the victim to attend tutorial classes. In the meantime the accused came towards them and asked her to leave alone the victim as he had to discuss some matters with the victim. Then she left the company of the victim. After some time she arrived at the school and noticed that the accused and the victim had already arrived at the school. There also, the accused asked her to leave the class room and then she left the class room. In cross-examination she has deposed that the accused is the related brother of the victim. She does not know what had happened between them.
- 15.6** P. W. 6 is the alleged victim. Her evidence shows that on 03-09-2016 at about 3.25 p.m. she was going to Dhepdhepi Girls' High School to attend tutorial class and then the accused followed her and started to abuse her by uttering obscene words and also indecently touched her. On reaching Dhepdhepi Market she tried to enter into the market and then the accused threatened her. The accused asked her whether she loved him or not and her reply was in negative and then the accused threatened her to kill her and her family members. Thereafter she went to her school and the accused followed her. In the class room the accused started to pull her wearing clothes and pushed her to down to the floor. Seeing the incident other students came to rescue her; but the accused threatened them with dire consequences at which they fled away. In the meantime one student Prankrishna Ray arrived at and the accused threatened him too. Thereafter the head teacher of the school Prakritish Ray arrived at the school and seeing him the accused fled away. She told the incident to the head teacher. Thereafter her brother came to the school and took her away from the school. In cross-examination she has deposed that Dhepdhepi Girls' High School is situated at a distance of two kilometers from her house. At the time of incident Bobita Ray, Ratna Ray and Prankrishna Ray were also present. The road from her house to the school is a busy road. Motor vehicles and pedestrians usually used the said road. The accused followed her from her house and abused her till she



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reached the school. Many people of her village saw that the accused was following her. She did not tell any person on the road about the incident. The road from her house to the school passes through Dhepdhepi market. At the time of the incident only two shops were open. There is a Mosque and at that time only two persons were present there. The accused told her that he will drag her away and would marry her and her parents would not be able to do anything. The accused is a resident of their village. She has denied the suggestion of the defence that she did not disclose before the investigating officer that the accused inside the class room pulled her wearing clothes and pushed her down on the floor and when she tried to enter Dhepdhepi market the accused threatened to kill her and her family members. She has denied the suggestion of the defence that the accused went to her school for his personal reason and seeing her he simply talked to her.

- 15.7** P. W. 7 Chandana Barman knows nothing about the incident.
- 15.8** P. W. 8 Karishma Ray is the classmate of the victim girl. She has deposed that on 03-09-2016 at about 3.30 p.m. she saw that the accused holding the hands of the victim proposing her to marry him. Then she tried to bring the victim out, but the accused prevented her. The victim started crying, but the accused did not release her. In the meantime teacher Prakritish Ch. Ray arrived at and asked what had happened. The accused abused him and the teacher informed the matter to the family of the victim. The accused threatened her not to disclose the same to anybody. In cross-examination she has deposed that at the time of incident Chandana Barman, Chandana Ray, Rukmini Ray, Prankrishna, Khanjan were present in the school. When she entered into the class room she saw that the accused was holding the hands of the victim. She has denied the suggestion of the defence that she did not disclose before the investigating officer that she did not try to bring the victim out and then accused threatened her too.
- 15.9** P. W. 9 Chandana Ray is the related sister of the accused. She has deposed that at the time of the incident when she reached the school to attend the tutorial class, the accused and the victim were inside the class room and other students were standing outside. On being asked the students outside the class room told her that accused threatened them. In the meantime teacher Prakritish Ray arrived and the accused abused their teacher using obscene words and also threatened them to kill if they told the incident at the



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home. Thereafter the accused left the place. In cross-examination she has deposed that Ranjana, Chandana, Rukmini, Merina, Prankrishna, Jayanta, Gautam were also present in the school. She has denied the suggestion of the defence that she did not disclose before the investigating officer that at the time of the incident when she reached the school to attend the tutorial class, the accused and the victim were inside the class room and other students were standing outside. On being asked the students outside the class room told her that accused threatened them. In the meantime teacher Prakritish Ray arrived and the accused abused their teacher using obscene words and also threatened them to kill if they told the incident at the home.

15.10 P. W. 10 Ramendra Nath Ray, P. W. 12 Uttam Kr. Ray and P. W. 13 Pradip Kr. Ray are seizure witnesses. P. W. 10 has deposed that he visited police station and in his presence police seized birth certificate of the victim girl vide Ext. 2 seizure list. Ext. 2 (1) is his signature as seizure witness. In cross-examination he has deposed that he knows nothing about the incident. P. W. 12 and P. W. 13 have deposed that police of Golokganj police station seized a bike vide Ext. 3 seizure list. Ext. 3 (1) and Ext. 3 (2) are their signatures respectively in the seizure list.

15.11 P. W. 11 is another cousin brother of the victim girl. He has deposed that on the day of the incident he saw that the accused was following the victim girl while she was going to her tutorial class and did not allow the victim to enter into any shop at Dhepdhepi market. Later on he came to know that the accused proposed his affairs to the victim and also heard that in the class room the accused pushed down her. Police took his signature in Ext. 2. Ext. 2 (2) is his signature. In cross-examination he has deposed that there are 200 shops at Dhepdhepi market. Police did not come to the market. He does not know what is written in Ext. 2. He had a quarrel with the mother of the accused over borrowing of some money.

15.12 P. W. 14 Rustam Raj Brahma is the investigating officer. He has deposed that on 03-09-2016, he was working at Golokganj P.S. as Officer-in-charge. On that day, the complainant lodged a written ejahar with an allegation that on that day at about 3:30 pm the accused rebuked her 14 year old daughter by using slang words and touched her body. He registered the ejahar and took up the investigation. Next day he visited the place of occurrence, recorded the statements of witnesses, prepared the sketch map of place of occurrence,





seized birth certificate of the victim and a motorcycle and on 19-09-2016 arrested the accused and produced him before the Court. By completing the investigation he has submitted charge sheet against the accused under sections 354-D/294/506 IPC and section 12 of POCSO Act. He has exhibited the seizure lists Ext. 2 and 3 and his signature thereon as Ext. 2 (3) and 3 (3), Sketch map of place of occurrence as Ext. 4. Ext-4(1) is his signature. Ext-5 is the charge sheet and ext-5 (1) is his signature. In cross-examination he has deposed that the complainant told him that the accused scolded her daughter with filthy words; but she did not disclose him that her daughter told her that the accused blocked the door of the classroom, pushed her down, not to disclose the matter to her. Witness Prankrishna Ray did not disclose before him that the victim was crying and the accused was consoling her. Witness Prakritish Ch. Ray did not disclose before him that the accused came back and went away. The victim did not disclose before him that the accused pulled her wearing dress and pushed her in the room. Witness Karishma Ray did not disclose before him that when their teacher Prakritish Ray arrived and questioned the accused what was he doing, the accused abused him uttering obscene word, at which he went to the office room and informed the house of the victim and she did not try to prevent the accused from harassing the victim and the accused threatened her to face dire consequences. Witness Chandana Ray did not disclose before him that when she reached the school then accused and the victim were inside the room and other students were outside of the room and when she asked them about the matter they told her that the accused threatened them. He prepared the sketch map on spot. At the time of incident the accused was a student of B. Sc. 1st year.

16.On perusal the evidence on case record it appears that P. W. 1, the mother of the alleged victim lodged the ejahar before O. C. Golokganj police station on the day of the incident i.e. 03-09-2016 and on the basis of the ejahar a case as Golokganj P. S. case No. 876/2016 under section 12 of POCSO Act was registered. On perusal the contents of the ejahar (Ext. 1) it appears that on the day of alleged incident the alleged victim was just 14 year old and was going to Dhepdhepi Girls' High School to attend her tutorial Classes. On the way to the school the accused indecently behaved her and followed her up to school and there also misbehaved her and threatened her too. In a case registered

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under the provisions of POCSO Act the age of the victim girl is very much important. In the ejahar the complainant who is the mother of the victim girl mentioned that at that time her daughter was just 14 year old. The investigating officer seized the birth certificate of the victim girl vide Ext. 2. The date of birth of the victim girl was 22-04-2002. Arithmetical calculation shows that at the time of the incident the alleged victim was 14 year 4 months 11 days old. The defence does not challenge the age of the victim girl. So, it is clear that on the day of the alleged incident the victim was a child as defined section 2 (d) of POCSO Act.

17. Though initially the case was registered under section 12 of the POCSO Act; but at the time of filing charge sheet the investigating officer found materials against the accused and submitted charge sheet against him to prosecute not only under section 12 of the POCSO Act but also under sections 354-D/294/506 IPC.

18. Section 354-D IPC deals with the offence of stalking. Stalking is a form of harassment comprising of repeated persistent following with no legitimate reason and with the intention of harming, or so as to arouse anxiety or fear of harm in the person being followed. The definition of the offence of stalking has the following ingredients:-

1. If a man

- (i) follows a woman and contacts or attempts to contact such woman,
- (ii) monitors the use by a woman of the internet, e-mail, or any other form of electronic communication,
- (iii) or watches or spies on a person.

2. to foster personal interaction repeatedly

3. despite a clear indication of disinterest by such woman.

19. From the evidence on case record it appears that on 03-09-2016 at about 3.30 p.m. the victim girl who was just 14 year old was going to attend her tutorial classes to a school which was about 2 k.ms. away from her house. P. W. 5 was also with the victim girl; but the accused compelled her (P. W. 5) to leave the company of the victim. As no one with the victim on the road; so, the deposition of the victim is very much important to appreciate what had happened on the road. The victim girl (P. W. 6) has deposed that the accused on the road started to abuse her by uttering obscene words and also indecently touched her. Being irritated she intended to enter Dhepdhepi market; but the accused did not allow her to enter the market. The accused expressed his feeling that he

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loved her and threatened her that if she does not love him he would kill her and her family members. From the evidence of the victim it appears that the accused went with her up to her school and inside the classroom he disturbed her. In the school there present some students whom the prosecution examined. From the evidence of Prankrishna Ray it appears that he saw that the victim was with the accused and she was crying. P. W. 5 who was with the victim on the road whom the accused compelled to leave the victim on the road once again deposed that in the school the accused told her to leave the class room. P. W. 9 Chandana Ray has also deposed that in the class room the accused did not allow other students to enter inside the class room. The evidence of head teacher Prakritish Ch. Ray (P. W. 3) is also important. He saw the accused in the classroom. The victim girl told him that the accused abused her on the way to the school, threatened her and in the classroom the accused pushed her to the ground. The victim girl has also deposed that she immediately informed the matter to the head teacher. The defence while cross-examined the victim girl put a suggestion that due to personal reason the accused visited the school and seeing her simply talked to her which the victim girl denied. From the suggestion of the defence it transpires that the defence has admitted that at the time of the incident the accused was in the school and he talked to the victim girl. But the defence has failed to show as to why he visited the school. Though he suggested that due to his personal reasons he visited the school; but the same has not been established. From the evidence on record it transpires that the accused expressed his feelings towards the victim girl that he loved her. At the same time the accused compelled her to love him. The accused threatened the victim girl that if she does not love him he would kill not only her but also to her family members. The evidence on record shows that the victim girl was not interested to the accused and in clear words she told him that she does not love him. When despite a clear indication of disinterest by the victim of the proposal of love the accused followed her up to her school, attempted to compel her to accept his proposal and in that course he misbehaved the other students present in the school; so, without any hesitation it can be concluded that the accused committed the offence of stalking as defined under section 354-D IPC.

20. Another charge against the accused is that on the day of the incident the accused annoyed the victim girl by uttering the obscene words in the public place. The evidence on record shows that the alleged incident took place on the public road and at Dhepdhepi Girls' High School. Undoubtedly both the places are public place. As per

section 294 IPC whoever, to the annoyance of others, a) does any obscene act in any public place, or b) sings, recites or utters any obscene songs, ballads or words, in or near any public place be punished under said section. As stated earlier the alleged incident took place on public place. The allegation against the accused is that he abused the victim girl by uttering obscene words. In the ejahar the complainant stated that the accused uttered obscene words towards her daughter. The victim has also deposed that the accused abused her by using obscene words. From the evidence on record it transpires that the accused placed his proposal to the victim girl that he loved her and he wanted same response from her. But the victim was in denial mood and for that reason the accused got irritated. The victim girl has not disclosed what the actual words the accused used when he abused her. The other witnesses have also failed to disclose the actual words used by the accused. A general statement in the ejahar that the accused showered obscene words is not enough to constitute the offence under section 294 (b) of IPC. It is necessary to state the words uttered by the accused. Whether a particular word is obscene or not it is necessary to know the actual word. The accused told the victim that he loved her and that expression cannot be termed as obscene expression. Though the prosecution is able to establish that the incident took place in public place; but failed to establish that the accused annoyed the victim girl by uttering obscene words. The victim girl may be annoyed with the behavior of the accused; but her annoyance was not uttering obscene words by the accused. So, it is held that the prosecution has failed to establish the charge against the accused under section 294 IPC.

- 21.** Another charge against the accused is that on the day of the incident he criminally intimidated the victim girl. The victim girl (P. W. 6) in her deposition has stated that the accused on her way to the school met her and told her that he loved her. In reply the victim girl told him that she does not love him and then the accused threatened her to kill and her family members. The accused, as per the victim, not only threatened her on the road, but he came to her school and inside the classroom disturbed her. The victim girl immediately informed the matter to her teacher Prakritish Ch. Ray who has also deposed that the victim girl told him that the accused threatened her. The victim girl told the incident to her mother (P. W. 1) who on the same day lodged the ejahar and deposed that her daughter told her that the accused threatened her to kill. The other witnesses, particularly the friends of the victim have also deposed that the accused not only threatened the victim but also to them and compelled them to stay outside of the



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classroom. Section 503 IPC defines criminal intimidation. The offence of criminal intimidation requires either a person or another in whom he or she is specially interested to be threatened. To bring home the offence of criminal intimidation the prosecution has to establish that the accused threatened the victim with any injury to her person, reputation or property or to any other person to whom she is interested. In the case in hand, from the evidence of the victim girl it transpires that the accused threatened not only to kill her but also to kill her family members in the event of refusal his love proposal. The victim girl at the time of the incident was a minor girl just 14 year old and at the same time the accused was a student of B. Sc. 1st year. The accused was very much matured at the time of the incident. On the other hand the victim being a girl of just 14 year was immature enough. The accused on the road met her, compelled her friends to leave her company and annoyed her placing his proposal of love to her. The victim became so irritated that she intended to enter into Dhepdhepi market just to avoid the irritation of the accused; but the accused did not allow her to enter into Dhepdhepi market. He went with her up to school which is situated in a far distance. In the school the accused not only threatened to the victim; but also threatened the other students present in the school premise. The intention of the accused to threaten the victim to compel her to accept his proposal of love. As the victim expressly refused to love him; so, the accused by threatening her and her family members tried to get her consent. The act of the accused showed his intention. The evidences on record are sufficient to hold the accused guilty that he on the day of the incident criminally intimidated the victim as defined under section 503 IPC and as such he is found guilty under section 506 IPC.

22.As stated earlier initially the case was registered under section 12 of the POCSO Act and the investigating officer after investigation submitted charge sheet against the accused to prosecute him under section 12 of the POCSO Act with other provisions of the Indian Penal Code.

23.Section 12 of the POCSO Act provides punishment for sexual harassment to a child. Section 11 of the POCSO Act defines sexual harassment. It provides that a person is said to commit sexual harassment upon a child when such person with sexual intent utters any word or makes any sound or exhibits his body, shows any object etc to a child.

24.In the case in hand it is established that the victim at the time of the incident was a child as defined in section 2 (d) of the POCSO Act. It is also established that the accused

annoyed the victim girl on the road while she was going to school to attend her tutorial class and in the classroom. But it is not established that the accused annoyed the victim girl by uttering obscene words etc. The main ingredient to establish the offence punishable under section 12 of the POCSO Act is that the harassment must be with sexual intention. The alleged incident took place on the road and the classroom. The victim girl has deposed that when she entered into the classroom the accused pulled her dress and threw to her on the grounds. She denied the suggestion of the defence that she did not disclose before the investigating officer that the accused pulled her dress. The investigating officer in his cross-examination has confirmed that the victim girl did not disclose before him that the accused pulled her school dress and threw her to the ground. At the time of the incident other students were outside of the school; but they have not deposed that the accused pulled the dress the victim girl. So far allegation of the victim against the accused of pulling her school dress is concerned it is established that she did not disclose the same before the investigating officer while he recorded her statement under section 161 Cr. P. C. So, it is clear that the victim girl for the first time implicated the accused saying that he pulled her dress inside the class room. Though the victim girl has deposed that the accused touched her body on the road; but the witnesses particularly P. W. 5 who was with the victim on the way to the school and P. W. 11, cousin brother of the victim who saw the accused and the victim on the road have stated nothing that the accused touched the body of the victim. The accused expressed his feelings towards the victim and on refusal his proposal of love by the victim he was irritated and threatened the victim girl. But his act though it was illegal was not with intent to harass her sexually as defined under section 11 of the POCSO Act.

25. In view of the above discussion and observation it is concluded that the prosecution is able to establish the requirements of the penal provisions under sections 354-D/506 IPC.

Hence, it is held that the prosecution is able to establish the charge against the accused under sections 354-D/506 IPC beyond all reasonable doubt and accordingly the accused is held guilty under said sections and he is convicted accordingly.

26. But the prosecution has failed to establish the charge against the accused framed against him under section 294 IPC and section 12 of the POCSO Act beyond all reasonable doubt and hence giving the benefit of doubt the accused is acquitted of under section 294 IPC and section 12 of the POCSO Act.

27. The accused/convict is the neighbor of the victim. His indecent act towards a girl of 14

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year in presence of her classmates and teacher annoyed her and put her on mental shock and embarrassment. It is the high time to protect the children from such person. Considering the nature of the case and its mode of execution I find no justifiable ground to extend the benefit of Probation of Offenders Act to the accused/convict.

28. Heard accused/convict on quantum of sentence. Also heard learned counsels appearing for the parties.

29. Accused/convict has stated that this was his first offence. He has prayed to excuse him as it was his first offence and he will not repeat such type of offence in future.

30. Learned counsel for the prosecution has submitted that the accused/convict should be given adequate punishment so that it becomes an example for the wrongdoer. On the other hand learned counsel for the defence has submitted that the accused is a young boy and a student. The prosecution has failed to show any criminal antecedent of the accused; so, has prayed to deal with him leniently considering his young age.

31. Prescribed punishment under section 354-D IPC is imprisonment of either description for a term which may extend to three years and shall also be liable to fine for the first conviction. Prescribed punishment under section 506 IPC (part I) is imprisonment of either description for a term which may extend to two years, or with fine, or with both.

32. The accused/convict is a young boy just 21 years old and it was his first conviction. Considering his age it is decided to impose following punishment.

ORDER

33. The prosecution is able to establish the charges against the accused Raju Ray under section 354-D/506 IPC beyond all reasonable doubts and accordingly he is convicted under said sections.

34. The accused/convict is sentenced to undergo rigorous imprisonment for 2 (two) years and also pay fine of Rs. 5,000/ (rupees five thousand) in default rigorous imprisonment for 1 (one) month under section 354-D IPC.

35. The accused/convict is further sentenced to go rigorous imprisonment for 1 (one) year and also pay fine of Rs. 2,000/ (rupees two thousand) in default rigorous imprisonment for 15 (fifteen) days under section 506 IPC.

2010/16
Special Judge
Dhubri

- 36.**Fine amount, if realized, shall be given to the victim as compensation.
- 37.**The period underwent during investigation and trial shall be set off as per law.
- 38.**The accused is acquitted of the charges framed against him under section 294 IPC and section 12 of the POCSO Act on benefit of doubt as the prosecution has failed to establish the same beyond all reasonable doubts.
- 39.**Return the seized articles to the person/persons from whom it were seized after expiry of appeal period.
- 40.**Furnish a free copy of the judgment and order to the accused/convict as per provision of law.
- 41.**Furnish another copy of judgment and order to the District Magistrate, Dhubri for information and necessary action, if any, from his side.

Victim compensation.

- 
- 42.**The victim girl who was a student and just 14 year old at the time of incident faced such a situation which cannot be explained and I am of the view that the victim girl is entitled to get compensation under section 357-A Cr. P. C. So, District Legal Services Authority, Dhubri is asked to determine appropriate amount of compensation to the victim girl as per victim compensation scheme and pay the same as early as possible.
- 43.**The bench assistant is directed to provide the name of the victim girl, her parents' name and address to the Secretary DLSA, Dhubri in a sealed envelope so that DLSA, Dhubri can communicate with the victim or her legal guardian.
- 44.**Send a copy of this order to the Secretary DLSA, Dhubri for information and necessary action.
- 45.**Given under my hand and seal of this Court this the 10th day of October 2018

Dipal Thakuria
19.10.18
(D. Thakuria)
Special Judge
Special Judge, Dhubri.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 30/2016

**UNDER SECTIONS: 354-D/294/506 IPC READ WITH SECTION 12 OF THE
POCSO ACT.**

STATE OF ASSAM

VS.

RAJU RAY

APPENDIX

A. Prosecution exhibits:

- Ext. 1 : Ejahar.
Ext. 2 & 3 : Seizure lists.
Ext. 4 : Sketch map of place of occurrence.
Ext. 5 : Charge sheet.

- B. Defence Exhibits :** Nil.

- C. Court Exhibits :** Nil.

D. Prosecution Witnesses:

- P. W. 1: Complainant,
P. W.2 : Prankrishna Ray,
P. W.3 : Prakritish Ch. Ray,
P. W.4 : Brother of the victim,
P. W.5 : Aunt of the victim,
P. W.6 : Victim,
P. W.7 : Chandana Barman,
P. W.8 : Karishma Ray,
P. W.9 : Chandana Ray,
P. W.10: Ramendra Nath Ray,
P. W.11 : Cousin brother of the victim,
P. W.12 : Uttam Kr. Ray,
P. W.13 : Pradip Kr. Ray &
P. W.14 : Rustam Raj Brahma.

- E. Defence Witness:** Nil.

- F. Court Witness :** Nil.

J. Thakuria
(D. Thakuria)
Special Judge
Dhubri.