IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora,

Special Judge, Udalguri, Assam.

Special (POCSO) Case No. 18/16. U/S 8 of the POCSO Act.

State of Assam......Complainant.

Vs

Sri Rajib Ghosh..... Accused.

Appearance:-

For the Prosecution : Mr. P.Baskey, Public Prosecutor.

For the defence : Mr. B. Sarma, Advocate.

Date of argument : 21.11.2017.

Date of Judgment : 21.11.2017.

JUDGMENT

The case of the prosecution, in brief, is that on 15.8.15 at about 8.30 AM informant alongwith her daughter Daimurani Daimary went to Nalbari market for stitching school dress of her daughter. She left Daimurani in the shop of tailor and went out. At that time on the pretext to take measurement the accused touched the private part of her daughter. Thereafter, when she came the accused stated that measurement was taken wrongly and again he took the measurement of her daughter and touched her private part. Then her daughter cried. On being knowing about it public gathered and assaulted the accused. Local people assured them to settle the matter. But the accused did not come forward. Hence delay caused in lodging the ejahar.

2. This court furnished copy of the necessary papers to the accused person. Upon perusal of materials on record and hearing submission advanced by the parties this court found a prima-facie case to frame charge against the accused for the offence punishable u/s 8 of the POCSO Act and charge was framed accordingly. Charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

- 3. In order to bring home the guilt of the accused person prosecution examined as many as eight witnesses. Accused is examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused put before him for his explanation where he denied the evidence and allegation and declined to give defence evidence.
- 4. I have heard argument advanced by the learned counsel of the parties and carefully gone through the evidence and other materials on record.

5. **POINTS FOR DETERMINATION**:

Whether the accused on or about 15.8.15 at about 8.30 AM at Nalbari weekly market under Rowta P.S. committed sexual assault upon Miss Daimurani Daimari, aged about 11 years?

DECISION AND REASONS THEREOF:

- 6. Prosecution examined the victim as PW8. She stated that she knows the accused Rajib Ghosh. On the day of incident she went to his shop for stitching cloth. At the time of taking measurement accused asked her to raise her hand. She could not understand what he says. So, she became angry and came out and informed her mother. Her mother lodged the ejahar on being anger. No incident of sexual assault was taken place. She was produced before the court. Her statement was recorded by the Magistrate. Ext.5 is the statement. Ext.5(1), 5(2) and 5(3) are her signature.
- 7. PW.7, Smti. Rita Daimary is the mother of the victim. She deposed that the occurrence took place in the year 2015. Victim is her daughter. At the time of occurrence her age was about 11 years. The accused is a tailor. On the day of incident her daughter went to stitch her cloth. At the time of taking measurement her daughter could not understand what the accused says. Out of misunderstanding she lodged FIR. Nothing wrong has been done with her daughter. No incident of sexual assault took place. Ext.3 is the FIR and Ext.3(1) is her signature. She was produced before the court. Her statement

was recorded by the Magistrate. Ext.4 is the statement. Ext.4(1) is her signature.

In cross-examination this witness stated that since no incident of sexual assault was committed, so she has no objection if the accused is acquitted.

- 8. PW1, Dr. Subhash Ch. Basumatary deposed that on 18.8.15 he was serving at Rowta Mini PHC as M & HO1. On that day, he examined Daimurani Daimary, aged 11 years female at 11.17 PM on being escorted by WPC-527 Kanchi Narzary in connection with hospital reference No.83/15. The doctor found no injury. Ext.1 is his report and Ext.1(1) is his signature.
- 9. PW2, Matilal Rabha deposed that he knows informant Smti. Rita Daimari. She hails from his village. He also knows the accused person. The occurrence took place around one year ago. He knows the victim girl. The victim is aged about 12/13 years. The alleged occurrence took place in the tailoring shop of accused. His house is situated at a distance of 2 furlong from the place of occurrence. At the time of occurrence he was at his residence. On hearing some commotion in the locality he came to the market area and came to know that the accused person sexually assaulted the victim girl while taking measurement for stitching a skirt of the victim. Police recorded his statement.

In his cross-examination he stated that the place of occurrence is a weekly market. There is no permanent construction in the weekly market. Tailoring shop of the accused was open. He has not seen the alleged occurrence. Many people visited the weekly market.

10. PW3, Bigrai Daimari deposed that informant Smti. Rita Daimari is his wife. Victim Daimurani Darimari is his daughter. She is now aged 13 years. He knows the accused person. The occurrence took place on 15.8.15. The occurrence took place at about 8/8.30 AM. At the time of occurrence he was working at his paddy field. While he was working in the paddy field an ABSU boy informed him over telephone that something happened to his daughter Daimurani at Nalbari weekly market. On getting such information he rushed to his home and found his wife and victim daughter. His wife told him that she alongwith the victim daughter went to the tailoring shop of accused at Nalbari weekly market for stitching a skirt for the victim. While taking measurement for

stitching the skirt for victim, accused in the pretext of taking measurement touched her private part. Thereafter, accused again took measurement of the victim stating that measurement already taken was not accurate. Then again while taking measurement the accused touched the private part of the victim girl. He found the victim girl weeping at that time. Then he came to the AABSU office and discussed about the matter. Police recorded his statement. Police got his daughter (victim) medically examined. Police also produced the victim girl before the Magistrate for recording her statement.

In cross-examination he stated that he did not visit the place of occurrence. He saw the accused person at ABSU office. Police arrested the accused person.

11. PW4, Bapukan Daimary deposed that he knows the accused person. He is a tailor. The occurrence took place on Saturday at Daifang Nalbari weekly market. The occurrence took place at morning hours. The business time of the said weekly market is upto 10 AM. At the time of occurrence he was at fish market of the said weekly market. At that time he heard a cry raised by a little girl aged about 12/13 years. He came to know that the accused while taking measurement of that girl for stitching a blouse his hand got touched at her chest. The ABSU members took the accused to their office.

In cross-examination he stated that he did not see the occurrence. The tailoring shop of the accused is situated in the weekly market. It is in the open space. All sides of the shop are open. The shop of the tailoring is visible from all sides.

- 12. PW5, Mukta Boro deposed that on 24.5.16 he was a constable at Rowta PS. On that day he was on duty at the police station. On that day, Bigrai Daimary, father of the victim girl, produced a birth certificate of the victim before the I.O. at the police station. I.O. seized the original birth certificate of Miss Daimu Rani Daimari, D/o- Bigrai Daimari in his presence on being produced by Bigrai Daimari. Ext. 2 is the seizure list. Ext.2(1) is his signature.
- 13. PW6, Smti. Lakhimi Daimary deposed that she knows the accused. She also knows both the informant and victim. The incident took place on 15.8.2015 at about 8 AM. At the time of occurrence she was proceeding from

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Nalbari market towards home. On hearing hulla she went to the place of

occurrence. She has not seen the incident. She knows nothing about the

incident.

14. In the instant case the alleged victim girl, who is the vital witness, did

not support the case of the prosecution on any material point. It is in the

evidence of the victim that accused did nothing with her. PW7, mother of the

victim, also stated that at the time of incident she was not present at the place

of occurrence. There is no whisper in the evidence of victim that the accused

person committed the alleged crime. Mother of the victim is reported witness.

They have not implicated the accused in the alleged commission of offence.

Other PWs are reported witness. The ingredients of the offence punishable

under Section 8 of POCSO Act are totally missing in the instant case.

15. In view of the foregoing discussion, I find and hold that the prosecution

has miserably failed to prove its case against the accused person and hence

accused is liable to be acquitted.

16. In the result, accused is acquitted of the charge and set him at liberty.

Given under my hand and the seal of this court on this the 21st day of

November /2017.

(S.Bora) Special Judge,

Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge, Udalguri.