IN THE COURT OF SPECIAL JUDGE: LAKHIMPUR: AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury, Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.23/2016.

Under Sections - 341/ 354(D)/34 IPC and under Section - 12 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

1. Sri Pulin Phukan.

2. Sri Rituraj Saikia.

3. Sri Shiva Saikia. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of

Assam.

Mr. Arup Bora, Advocate. ... For the Accused.

Date of framing of charge. : 14.12.2016.

Dates of taking evidence. : 03.05.2017, 01.08.2017, 27.11.2017,

28.03.2018, 03.07.2018, 29.08.2018

and 14.09.2018.

Date of hearing Argument. : 07.12.2018. Date of delivery of Judgment. : 07.12.2018.

<u>JUDGMENT</u>

1. The case of the prosecution side may, in brief, describe thus :

The informant, Sri Putul Borah on 08.10.2018 lodged an ejahar with Panigaon Police Station to the effect that the victim X is his daughter. On 07.10.2018 at about 2.15 pm, while his

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daughter victim X along with her five other classmates was coming from Panigaon Higher Secondary School towards their respective houses, at that time on the way, the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia followed them by boarding in a car and abused them by using slang words and also assaulted one of their classmates. Thereafter, one Sri Dipu Borah restrained the victim X by their car and tried to get her into their car and as at that time, some people assembled and then the accused fled away from that place.

- 2. On receiving the ejahar, the Officer-in-charge of Panigaon Police Station registered a case vide Panigaon P.S. Case No.113/2015 under Sections 354(D)/ 354(A)(2)/ 294/ 341/ 366/ 511 IPC.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence, prepared sketch map of the place of occurrence and recorded the statements of the witnesses u/s 161 CrPC. The I.O. arrested the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia and forwarded them before the court. The I.O. got the statement of the victim X recorded u/s 164 CrPC in the court. The I.O. seized one Maximo Van bearing registration No.AS.07.C/ 4249 from the possession of Sri Girindra Das in connection with this case. After completion of the investigation on being found sufficient incriminating materials against the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia under Sections 341/ 354(D)/ 34 IPC and under Section 12 of the POCSO Act, the I.O. submitted the charge-sheet against the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia under Sections 341/ 354(D)/ 34 IPC and under Section 12 of the POCSO Act.
- 4. The accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia made his appearance before the court and necessary copies were furnished to them. After hearing the learned advocates of both sides and perusing the case record, on being found

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sufficient incriminating materials against the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia under Sections 341/354(D)/34 IPC and under Section 12 of the POCSO Act in the case record, the charges under Sections 341/354(D)/34 IPC and under Section 12 of the POCSO Act had been framed against the accused persons. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 10 (Ten) witnesses.
- 6. The statements of the accused persons have been recorded u/s 313 CrPC, which are total denial of the occurrence.
- 7. The accused persons denied to adduce any evidence in their defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the all accused persons on 07.10.2015 at about 2.15 pm at Kharkati under Panigaon Police Station wrongfully restrained the victim X while she was coming from Panigaon High Secondary School?
- (II) Whether the all accused persons in furtherance of their common intention had followed the victim X and made contact to the said victim X to foster their personal interactions repeatedly despite clear indication of disinterest by her?

(III) Whether the all accused persons had committed sexual harassment upon the person of the victim X, who was a minor girl above the age of 12 years?

11. **DECISION AND REASONS THEREOF**

PW.1 is the victim of the case. PW.1, the victim X in her evidence stated that the accused persons are Sri Shiva Saikia, Sri Rituraj Saikia and Sri Pulin Phukan. She also stated that the occurrence had taken place while she was reading in class-VIII in the year, 2015. According to her, on the date of occurrence at about 12 pm, she was coming to her house along with Smti Priyanka Borah, Smti Bulbuli Das and Smti Nitumoni Das from the school by riding bicycles. When they entered into a shop to purchase 'Pokori', at that time, the accused persons were also there nearby the shop of 'Pokori' and they raised noise. So, her classmates asked the accused persons as to why they were making so noise, then the accused persons rebuked them. According to her evidence, the accused persons came to that place by a car. She in her evidence also stated that thereafter, she along with her classmates came to their house and informed the matter to her family members. She also stated that she informed the matter to her parents and her elder brother. Then, her father, Sri Putul Borah lodged an ejahar with the Police Station. She in her evidence also stated that she had given her statement before the court. She proved her statement recorded u/s 164 CrPC as Ext.1 and Ext.1(1) and Ext.1(2) are her signatures in it. She in her cross-examination stated that she had given her statement before the Magistrate on being tutored by the police. She in her cross-examination further stated that the accused persons simply rebuked them and had done nothing else.

This is the evidence adduced by the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused persons for committing any offence. The only incriminating material against the accused persons is that they had rebuked the victim X and her classmates. Rebuke does not fall in the category of any offence.

PW.2, Sri Putul Borah is the father of the victim X as well as informant of the case. He in his evidence stated that the occurrence had taken place about 2 years back. According to his evidence, his daughter victim X informed him that on the date of occurrence, when the victim X was coming home from the school along with her friends, then the accused persons were present nearby the 'Pokori' shop situated at Pahumara Tiniali, and then the accused persons rebuked the victim X and her friends by using filthy language. He also stated that he informed the matter to the teachers and they asked him to lodge a case against the accused persons. He proved the ejahar as Ext.2 and Ext.2(1) is his signature in it. But, in crossexamination, he stated that he did not state before the police that the accused persons rebuked the victim X by using filthy language. So, the evidence adduced by PW.2, the father of the victim X as well as informant of the case is contrary with the statement made by him before the police.

PW.3, Smti Priyanka Borah in her evidence stated that on the date of occurrence, she along with the victim X and Nitumoni were coming home from the school and on the way, they entered into a shop near Pahumara to take some snacks, then the accused persons were making hue and cry at that place. She in her evidence also stated that the accused persons had scolded them and thereafter, they left that place in fear. She in her cross-examination stated that when the all accused persons raised hue and cry amongst themselves, they asked the accused persons not to make such hue and cry, and then the accused persons told them not to interfere into their matter and asked them to depart, which made her to think that the accused persons were scolding them. She also stated that the accused persons had done nothing else.

On a careful scrutiny of the evidence of the PW.3, Smti Priyanka Borah, I do not find any incriminating material in her evidence against the accused persons regarding commission of any offence.

PW.4, Sri Dipu Borah in his evidence stated that at the time of occurrence, he along with the victim X and Smti Priyanka Borah were coming to their respective houses from the school, and on the way, they entered into a shop to take snacks, and at that time, the accused persons were making hue and cry. Then the accused persons also said something to the victim X while they were at some distance. He in his cross-examination stated that the accused persons were making hue and cry amongst themselves and they asked the accused persons not to make hue and cry. Then, the accused persons told them not to interfere into their matter and asked them to depart. He also stated that he had not heard what the accused persons told to the victim X.

On a careful scrutiny of the evidence of the PW.4, Sri Dipu Borah, I do not find any incriminating material in his evidence against the accused persons regarding commission of any offence.

PW.5, Sri Kula Prasad Gogoi in his evidence stated that at the time of occurrence, he was the General Secretary of Panigaon Higher Secondary School. He also stated that on the date of occurrence, one Sri Girindra Das, the Vice President of their School informed him over telephone that three persons had committed ill-behaviour with their school girls while they were going towards their houses by riding bicycles. He also stated that then he along with Sri Girindra Das, the Vice President of the Students' Union of Panigaon Higher Secondary School went to the place of occurrence i.e., Dhenudhoria. He also stated that at Dhenudhoria, one of the accused persons named Sri Shiva Saikia was caught by the public. He in his evidence also stated that he came to know that the accused, Sri Shiva Saikia along with two others were involved in the crime.

This is the evidence adduced by the PW.5, Sri Kula Prasad Gogoi. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

PW.6, Sri Bhrigu Prasad Sarmah is the Assistant Teacher of Panigaon Higher Secondary School. According to him, at the time of occurrence, he was in his house. He also stated that after the occurrence, Sri Girindra Das, the then Principal of his school informed him over mobile phone that a quarrel took place between some persons and the victim X. He in his evidence also stated that on receipt of the telephone call, he went to the house of the victim X along with Sri Girindra Das, then the Principal of the school. When he reached in the house of the victim X, he saw one person named Shiva had been confined by the village people. He also stated that thereafter the police from Panigaon Police Station reached to the house of the victim X, and the accused, Shiva had been handed over to the police. He in his evidence also stated that thereafter, he came to know from the victim X that a quarrel had taken place between the victim X and the accused person. He also stated that he had not seen the occurrence.

This is the evidence adduced by the PW.6, Sri Bhrigu Prasad Sarmah. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

PW.7, Sri Prasanta Barik, who is the teacher of Panigaon Higher Secondary School, in his evidence stated that the victim X was a student of their school and in this year, she had appeared in the H.S.L.C. Examination. He also stated that on the date of occurrence, the then Principal, Lt. Girindra Das of Panigaon Higher Secondary School informed me over mobile phone to meet with him to go to somewhere. Then, he went to the house of the then Principal, Girindra Das and thereafter Girindra Das had boarded him in the car of Girindra Das and he took him in a house at Dhenudhoria. In the house at Dhenudhoria, he found some people had been gathered and the accused, Sri Shiva Saikia had been confined by the people. Then, he

came to know from the students of his school that a quarrel had taken place between the victim X and the accused, Sri Shiva Saikia. Thereafter, he along with Girindra Das and other persons came to the Panigaon Police Station and the police had recorded his statement.

This is the evidence adduced by the PW.7, Sri Prasanta Barik. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

PW.8, Smti Nitumoni Das in her and PW.9, Sri Rubul Rajkhowa in their evidence did not implicate the accused persons regarding commission of any offence. They in their evidence stated that they did not know regarding the occurrence of this case.

PW.10, SI Utpal Sarmah is the Investigating Officer of the case. As there is no material in his evidence, who had investigated the case and submitted the charge-sheet against the all accused persons. There is no material in the evidence adduced by the Investigating Officer, which may lead to hold the guilty of the accused persons.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Sections 341/ 354(D)/ 34 IPC and under Section 12 of the POCSO Act brought against the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia, and the accused persons deserve to be acquitted.

13. I, therefore, hold the accused, Sri Pulin Phukan, Sri Rituraj Saikia and Sri Shiva Saikia not guilty and acquit them from the charges under Sections 341/ 354(D)/ 34 IPC and under Section 12 of the POCSO Act. The accused persons are set at their liberty forthwith.

14. The bail bonds of the accused persons are cancelled and their sureties are discharged.

15. Given under my hand and seal of this court on this the 7th day of December, 2018.

> (M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Victim X.

PW.2 - Sri Putul Borah, the informant of the case.

PW.3 - Smti Priyanka Borah.

PW.4 - Sri Dipu Borah.

PW.5 - Sri Kula Prasad Gogoi.

PW.6 - Sri Bhrigu Prasad Sarmah.

PW.7 - Dr. Prasanta Barik, the M.O. of the case.

PW.8 - Smti Nitumoni Das.

PW.9 - Sri Rubul Rajkhowa.

PW.10 - SI Utpal Sarmah, the I.O. of the case.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

3. <u>DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE</u>

Ext.1 - Statement of the victim X recorded u/s 164 CrPC.

Ext.2 - Ejahar.

Ext.3 - Charge sheet.

4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>: Nil

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.