

IN THE COURT OF SPECIAL JUDGE (POCSO)

NALBARI

SPL. (P) CASE NO. 34/2018

U/s 10 Protection of Children from Sexual Offences Act, 2012

r/w 354-A Indian Penal Code

State of Assam

- Vs -

Prabin Kalita

..... Accused

Present

Smti Munmun B.Sarma

Special Judge (POCSO),

Nalbari

Counsel for Prosecution : Mr.K.K.Sarma, Special Public Prosecutor

Counsel for Defence : Sri Jayanta Kalita & Purabi Sarma, Advocate

Evidence : 03/07/19, 16/08/19, 27/09/19, 20/11/19, 19/02/2020

Argument : 13/03/2020

Judgment : 10/06/2020 (*Delayed due to Covid-19 Pandemic Lockdown*)

JUDGMENT

1) On 17/09/2018 the informant Smti. Niva Talukdar lodged an *ejahar* before Ghagrapar PS stating inter alia that, her niece Victim 'X' is a student of Class III and on that day at around 10.30 AM her niece came back home crying. When enquired, 'X' informed that the accused

Sri Prabin Kalita, who is Headmaster of her school, sexually assaulted her in the school room. They immediately went to school but the accused managed to flee. Hence, the present FIR.

2) On receipt of the FIR police registered a case as Ghagrapar P.S. Case No. 265/18 u/s 354 IPC r/w s.12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act). The police went to the place of occurrence and examined the available witnesses. Statements of the witnesses were recorded, medical examination of the victim 'X' was done and her statement u/s 164 CrPC was duly recorded. On completion of investigation, a prima facie case having appeared against the accused, the IO submitted charge sheet against accused Prabin Kalita u/s 354 IPC r/w s.12 POCSO Act.

3) Cognizance was taken u/s 354 IPC r/w s.12 POCSO Act and the accused Prabin Kalita appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on Case Record and Case Diary and prima facie case having appeared u/s u/s 354 IPC r/w s.12 POCSO Act, charges were framed and the content of the offences were read over and explained to the accused Prabin Kalita, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 354 IPC r/w s.12 POCSO Act against the accused person, the prosecution side examined the following 11 (eleven) witnesses & exhibited 6 documents. To substantiate his claim, defence did not examine any witness. The accused person's case, as could be

ascertained from cross-examination of the prosecution witness was that of total denial.

5) The **points for determination** are –

- (a) Whether on 17/09/2018 at about 10-30 AM the accused Prabin Kalita committed sexual harassment upon the victim 'X' at No.150 Dalua LP School, thus, punishable u/s 354-A IPC?
- (b) Whether on the same date, time & place the accused Prabin Kalita committed sexual harassment victim 'X', aged 10 years, thus, punishable u/s 12 POCSO Act?

Arguments Forwarded by Both Sides –

6) Ld. Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused did in fact sexually assaulted the victim 'X'. Medical evidences proved that the victim was above ten years but below 13 years at the time of incident & the Age Certificate showed that the victim was in fact 10 years few months. He prayed that maximum punishment should be given.

DISCUSSIONS, DECISIONS & REASONS THEREOF –

7) I heard the arguments forwarded by the Ld. Special Public Prosecutor and Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charge u/s 354-A IPC r/w s.12 POCSO Act are analyzed herein below in view of the materials available on record and the argument forwarded by both side.

8) **To be convicted u/s 354-A IPC it must be proved** that the accused Prabin Kalita committed any of the acts enumerated in s.354A

(1) IPC. It reads as follows –

- (1) *A man committing any of the following acts—*
- (i) *physical contact and advances involving unwelcome and explicit sexual overtures; or*
 - (ii) *a demand or request for sexual favours; or*
 - (iii) *showing pornography against the will of a woman; or*
 - (iv) *making sexually coloured remarks, shall be guilty of the offence of sexual harassment*

On the other hand, **to be convicted u/s 12 POCSO Act it must be proved** that the victim 'X' was a child at the time of incident & that the accused Prabin Kalita committed sexual harassment upon her. S.2 (1) (d) POCSO Act defines child as "*...any person below the age of eighteen years.*" **S.11 POCSO Act defines 'sexual harassment'** as follows –

A person is said to commit sexual harassment upon a child when such person with sexual intent -

- i. utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or*
- ii. makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or*

- iii. *shows any object to a child in any form or media for pornographic purposes; or*
- iv. *repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or*
- v. *threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or*
- vi. *entices a child for pornographic purposes or gives gratification therefore.*

9) Keeping the above parameters in mind, the evidences of the witnesses and documentary evidences are analyzed. The evidence of the victim being of paramount importance, her evidence is 1st analyzed. The **victim 'X' deposed as PW2**. Considering her age, the Court put general questions to ascertain her capacity to adduce evidence, and once satisfied, the evidence of PW2 was recorded. Furthermore, the victim/PW2 being about 10-years-old, no oath was administered upon her. PW2/victim deposed that the informant is her aunt and the accused is the headmaster of her school. On the date of the incident, on instruction of the accused, the students were cleaning the school for *Viswakarma Puja*. The victim, Pragyan & Dhritismita were cleaning the veranda. After taking the accused's permission they left the school. During cross-examination victim/PW2 deposed that the accused never misbehaved with her. She also stated that she doesn't remember what she stated before the magistrate when her statement u/s 164 CrPC was

recorded. Thus, evidence of the victim/PW2 is completely silent about the accused committing any sexual harassment on her and rather she deposed that the accused didn't misbehave with her.

10) The informant **Niva Talukdar deposed as PW1**. She stated that on the day of the incident she went to the school to bring back the victim from the *Viswakarma Puja*. However, the public present there told her that the accused held the victim's hand during the puja and instigated her to lodge the case. Hence, PW1 lodged the case. PW1/informant is completely silent regarding the accused committing any sexual harassment to the victim. Furthermore, evidence of PW1 doesn't support her FIR. In the FIR she claimed that she went to the school because the victim came home crying and told that the accused sexually harassed her, however, during her evidence PW1 stated that she went to the school to collect the victim. Hence, I'm of the opinion that the informant is not a reliable witness.

11) **Dhritismita Kalita deposed as PW4** and she is a child witness. She was present with the victim 'X' on the date & time of incident. She corroborated the evidence of victim/PW2 that on instruction of the accused the students were cleaning the school & the victim & Dhritismita were cleaning the veranda. After taking the accused's permission they left the school. Thus, her evidence is also completely silent regarding any sexual harassment by the accused. On the other hand, **PW9 Pragyan Kalita**, who is also a child witness, deposed that he was playing harmonium in the school when the accused

displayed his penis to the victim. PW9 also deposed that at the time of the incident the PW4 was also present in the room. Though the evidence of PW9 is clear & precise, however, it didn't find corroboration from the victim/PW2 herself or from the other alleged eye-witness PW4.

12) **PW5 Homen Bharali & PW7 Ranju Kalita** is a hearsay witness & doesn't know anything about the incident, except the fact that the accused asked the victim & few other students to leave school after sometime. **PW10 Padma Kalita** deposed that he heard from villagers that the accused displayed his penis to the victim. However, PW10 being a hearsay witness, his evidence becomes irrelevant. Pertinent to mention that during his cross-examination PW10 mentioned that there was a village meeting where it revealed that the allegation against the accused is false.

13) On the other hand, **PW6 Sabina Kalita** claimed that she heard the informant/PW1 accusing the accused of some bad gestures to the victim. **PW8 Monika Bharali** deposed that she heard from PW1 that the accused had displayed his penis to the victim. However, PW1 didn't corroborate the evidences of these two witnesses, even though they claimed PW1 told them about the incident. Hence, their evidence remained uncorroborated.

14) Thus, what can be understood from the above evidences is that, there was an incident in the village where PW1 did levy the allegation on the accused that he sexually harassed the victim/PW2. However, during

evidence both PW1 & PW2 exonerated the accused. Though, eye-witness PW9 Pragyan Kalita supported the original claim of the prosecution, however, when the informant & the victim is absolutely silent regarding the same and exonerated the accused, PW9's evidence loses its value. Hence, it is held that **prosecution failed to prove the charges against the accused Prabin Kalita u/s 354-A IPC r/w s.12 POCSO Act beyond all reasonable doubt.**

ORDER

15) Thus, in view of the discussions made in the prior paragraphs it is held that the accused is not guilty u/s 354-A IPC r/w s.12 POCSO Act. **Accused Prabin Kalita is acquitted on benefit of doubt and set at liberty.** Bail bond is cancelled and the bailor discharged.

Zimma, if any, is made absolute.

A copy of the judgment be forwarded to the learned District Magistrate, Nalbari, as provided u/s 365 CrPC.

Let the case record be consigned to record room after completing the formalities.

Given under my hand and seal of this Court on this the **10th day of June'2020.**

(Smti Munmun B.Sarma)
Special Judge (POCSO),
Nalbari

APPENDIX

(A) **Prosecution Witnesses:**

- a) PW1 – Smti Niva Talukdar (Informant)
- b) PW2 – 'X' (Victim)
- c) PW3 – Dr. Urmi Devi Choudhury (Medical Officer)
- d) PW4 – Ms. Dhritismita Kalita
- e) PW5 – Sri Homen Bharali
- f) PW6 – Smti Sabina Kalita
- g) PW7 – Smti Ranju Kalita
- h) PW8 – Smti Monika Bharali
- i) PW9 – Mst. Pragyan Kalita
- j) PW10 – Sri Padma Kalita
- k) PW11 – Sri Arup Pathak (IO)

(B) **Prosecution Exhibits:**

- a) Ext.1 – FIR
- b) Ext.1 (1) – Signature of PW1 Smti Niva Talukdar (Informant)
- c) Ext.1 (2) – Signature of PW11 Sri Arup Pathak (IO)
- d) Ext.2 – Statement u/s 164 CrPC of Victim/PW2
- e) Ext.2(1) and 5(4) - Signatures of PW-2 (Victim)
- f) Ext.3 – Medical Report
- g) Ext.3 (1) & (2) – Signature of Dr. Urmi Devi Choudhury (MO)
- h) Ext.4 – Lab Report
- i) Ext.5 – USG Examination Report
- j) Ext.6 – X-ray Report

- k) Ext.5 (1) & 6 (1) – Signature of Radiologist
- l) Ext.7 – Statement u/s 164 CrPC PW4 Ms. Dhritismita Kalita
- m) Ext.7(1) and 5(4) - Signatures of PW4 Ms. Dhritismita Kalita
- n) Ext.8 – Sketch Map
- o) Ext.9 – Charge-sheet
- p) Ext.8 (1) & 9 (1) – Signature of PW-11/ Sri Arup Pathak (IO)

(C) **Defence Witnesses** : None.

(D) **Defence Exhibits** : None.

(Smti Munmun B.Sarma)

Additional District & Sessions Judge,
Nalbari