

**IN THE COURT OF SPECIAL JUDGE (POCSO)**  
**NALBARI**

**SPL. (P) CASE NO. 18/2018**

*U/s 8 Protection of Children from Sexual Offences Act, 2012*

*r/w 354 Indian Penal Code*

**State of Assam**

- Vs -

**Padma Nath Haloi**

..... Accused

**Present**

**Smti Munmun B.Sarma**

Special Judge (POCSO),

Nalbari

Counsel for Prosecution : Mr.K.K.Sarma, Spl. PP

Counsel for Defence : Md. Abdul Mazid, Advocate

Evidence : 25/01/2018, 8/03/2019, 30/08/2019, 31/08/2019,  
02/09/2019, 25/10/2019

Argument : 13/03/2020

Judgment : 12/06/2020 (*Delayed due to Covid-19 Pandemic Lockdown*)

**JUDGMENT**

1) The gist of the prosecution case, in brief is that, the informant ASI Manoranjan Medhi of Nalbari PS lodged an *ejahar* on 03/04/2018 before the O/C, Nalbari PS stating, inter alia that, with reference to GD Entry No 85 dtd. 03/04/2018, he went to Balikaria Basudev Bidyapith and came to

know that on 29/03/18 during examination, the accused Padma Nath Haloi, who was a teacher of that school, touched the breast of Victim 'X' (13 years old). Coming to know about the incident, mother of victim Smti Kalpana Kalita came to school at about 11-30 PM accompanied by local people. They charged the accused regarding the incident & confined him in the office room of the school. The public also damaged the school's furniture. Police came to the spot on receiving information & brought the accused to the police station. Hence, this case.

2) On receipt of the FIR it was registered as Nalbari PS Case No. 198/2018 u/s 354 IPC R/W Sec. 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) against accused Padma Nath Haloi. 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 Padma Nath Haloi u/s 354 IPC r/w s.8 POCSO Act.

3) Cognizance was taken u/s 354 IPC r/w s.8 POCSO Act and the accused Padma Nath Haloi 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 354 IPC r/w s.8 POCSO Act, charge was framed and the

content of the offence was read over and explained to the accused Padma Nath Haloi, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 354 IPC r/w s.8 POCSO Act against the accused person, the prosecution side examined 9 (nine) witnesses & exhibited 7 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 witnesses & his statement u/s 313 CrPC, was that of total denial.

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

- a) Whether the accused on 29/03/2018 at Balikaria Basudev Vidyapith School, used criminal forces upon the victim 'X' with intent to outrage her modesty?
- b) Whether the accused on 29/03/2018 at Balikaria Basudev Vidyapith School, committed sexual assault upon the victim 'X', who is under the age of 18 years?

**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'. The victim being a minor may not have told her family immediately, but she did inform as the earliest opportunity. As the accused being the teacher of the school, sexually assaulted the victim (a student) in the school itself. Hence he deserves severest punishment.

7) Ld. Counsel for the accused argued that evidence of the witnesses revealed that this is a false and concocted case and created by the victim as the accused caught her cheating during examination and reprimand her. She felt ashamed on being reprimand and therefore created this false story. Furthermore, the person who led the public into damaging the school properties is a former student of the school, who was expelled due to his activities and the accused was primarily responsible for his expulsion. Thus, this person holds a grudge against the accused and created this false story.

#### **DISCUSSIONS, DECISIONS & REASONS THEREOF –**

8) I heard the arguments forwarded by the Ld. Special Public Prosecutor and ld. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charge u/s 354 IPC r/w s.8 POCSO Act is analyzed herein below in view of the materials available on record and the argument forwarded by both side. As both these sections are inter-related & have roughly the same set of ingredients to be proved, they are discussed together herein below, without losing their individuality.

9) **To be convicted u/s 354 IPC** it must be proved that the accused Padma Nath Haloi **assaulted or used criminal force** to the victim 'X', **intending to or knowing it to be likely to outrage her modesty.**  
**S.351 IPC defines assault** as –

*"Whoever makes any gesture, or any preparation intending or knowing, it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault."*

On the other hand, **S.350 IPC defines assault** as –

*"Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."*

**To be convicted u/s 8 POCSO Act** it must be proved that the accused Padma Nath Haloi **committed sexual assault** on the victim 'X', who was a minor & below 18 years at time of incident. **'Sexual assault' has been defined u/s 7 POCSO Act** as follows -

*"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."*

As s.7 POCSO Act uses the term 'intent', it is important to remember that **s.30 POCSO Act makes a statutory presumption regarding 'culpable mental state of the accused'**. This section reads as follows –

**"30. Presumption of culpable mental state - (1)**

*In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".*

POCSO Act also makes a statutory presumption as regarding to offences u/s 3, 5, 7 & 9, and it reads as follows -

**"29. Presumption as to certain offences -**

*Where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."*

Pertinent to mention that, under the POCSO Act, there is no other requirement to be complied with by the prosecution to raise presumption u/s 29 POCSO Act, except to show that the accused has been prosecuted for any of the offences as enumerated u/s 29 POCSO Act. In view of these discussions, the evidences of the witnesses are discussed below.

10) The **victim 'X' deposed as PW1**. She deposed that the accused is a teacher in the school & on the day of the incident he was the invigilator in the classroom where her exam was going on. During the exam time the accused touched her breast from behind. She was so ashamed that she didn't tell anyone. According to PW1 the accused had on earlier occasions also had touched other girl students inappropriately but no one complained because they were afraid & ashamed. Cross-examination of PW1 revealed that during the examination she shared the bench with two other students and that there was large no. of students appearing for the exam. It was also revealed that PW1 informed her family about the incident a few days after the incident as there was a function in the house. Perusal of the statement of the victim u/s 164 CrPC reveals that she stated the same things as mentioned in her evidence before Court.

11) Best witness to corroborate the evidence of PW1 are the students present in the examination hall, more particularly, her bench-mates. **PW-8 Chayanika Dutta** was the victim's bench-mate during the exam and she deposed that the victim/PW1 was asking her and other students for answer. At this, the accuse, who was the invigilator, scolded her and made

her to sit in the chair. According to PW-8 no other incident happened. Thus, we see that the eye-witness didn't support the claim of the victim or the prosecution.

12) **PW-2 Smti. Kalpana Kalita** is mother of the victim & **PW-6 Smti. Rita @ Nibha Talukdar** is the aunt of the victim. They are the only witnesses who supported the claim of the victim that the accused sexually assaulted her. However, during cross-examination their evidence became shaky. PW2 couldn't explain why she didn't report the matter immediately on hearing & neither could she explain the discrepancies in her evidence. On the other hand, PW6's presence in the house of the victim itself is questionable and contradictory to her statement before the police. Furthermore, she claimed that the victim told her about the incident, however, the victim is completely regarding this matter.

13) Perusal of the evidences of the other witnesses reveals **that PW-4 Harmohan Majumdar** is a retired teacher of the school, **PW-5 Sri Dilip Kr. Deka** is a teacher of the school & **PW-7 Smti Anjana Barman** is the Head Mistress of the school. All these witnesses deposed that they had no knowledge about the incident till the victim's mother accompanied by other people came to the school & charged the accused. They also deposed that in the *thana* they came to know that the group of people accompanying victim's mother was led by one Sri Ajanta Rajbongshi, who was a student of the school but was expelled because of enticing girls. Their cross-

examination further revealed that the accused was instrumental in expulsion of Sri Ajanta Rajbongshi because of his deeds.

14) Thus, the appreciation of the evidences of the witnesses reveal that PW-6 being sitting next to the victim at the time of incident didn't see the accused touching the breast of the victim and rather, PW-6's evidence revealed that the accused scolded the victim because she was trying to cheat during the exam. Furthermore, there is a time gap between the incident and the reaction by the aggrieved party. Prosecution and the witnesses failed to give a reasonable ground for the delay and the victim said that she didn't tell as there was a function at home. However, this explanation is not reasonable. Furthermore, the independent witnesses pointed out that the person who led the unruly mob is a person who was expelled from the school and he holds a grudge against the accused because of this.

### **ORDER**

15) Hence, in view of the above discussions, it is held that **prosecution failed to prove the charges against the accused Sri Padma Nath Haloi u/s 354 IPC r/w s.8 POCSO Act beyond all reasonable doubt.** Thus, accused **Sri Padma Nath Haloi 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 **12<sup>th</sup> day of June'2020.**

**(Smti Munmun B.Sarma)**

Special Judge (POCSO),

Nalbari

**APPENDIX**

(A) **Prosecution Witnesses:**

- a) PW 1: 'X' (Victim)
- b) PW 2: Smti. Kalpana Kalita (Mother of victim)
- c) PW 3: ASI Manoranjan Medhi
- d) PW 4: Harmohan Majumdar
- e) PW 5: Sri Dilip Kr. Deka
- f) PW 6: Smti. Rita @ Nibha Talukdar
- g) PW 7: Smti Anjana Barman
- h) PW 8: Smti.Chayanika Dutta
- i) PW 9: Manilisha M Bhakta (Investigation Officer)

(B) **Prosecution Exhibits:**

- a) Ext.1 – Statement victim u/s 164 CrPC
- b) Ext.1 (1) – (3) – Signatures of PW-1 (Victim)
- c) Ext. 2 – Statement u/s 164 CrPC of PW2 Kalpana Kalita
- d) Ext-2 (1) & (2) - Signatures of PW2 Kalpana Kalita
- e) Ext.3 – FIR
- f) Ext.3 (1) – Signature of PW3 Manoranjan Medhi (Informant)
- g) Ext-3(2) – Signature of Inspector of Badrul Islam
- h) Ext.4 – Sketch Map
- i) Ext.4 (1) – Signature of PW9 Manilisha M Bhakta
- j) Ext.5 – Seizure List
- k) Ext.5 (1) – Signature of PW9 Manilisha M Bhakta
- l) Ext.6 – Charge-sheet
- m) Ext.6 (1) – Signature of PW9 Manilisha M Bhakta
- n) Ext.7 – Extract copy of GDE No 85 dtd 3/4/18 of Nalbari PS
- a) Ext.7 (1) – Inspector of Badrul Islam

- (C) **Defence Witnesses** : None.
- (D) **Defence Exhibits** : None.

**(Smti Munmun B.Sarma)**

Special Judge (POCSO),

Nalbari