

IN THE COURT OF SPECIAL JUDGE (POCSO)

NALBARI

SPL. (P) CASE NO. 01/2017

*U/s 325 Indian Penal Code
r/w s. 12 Protection of Children from Sexual Offences Act, 2012*

State of Assam

- Vs -

Manab Das Accused

Present

Smti. Munmun B. Sarma

Special Judge (POCSO)

Nalbari

Counsel for : Sri K K Sarma, Learned Special Public
Prosecution Prosecutor

Counsel for : Sri Sandip Kr. Talukdar & Pranita Haloi,
Defence Advocate

Evidence : 26/07/2017, 17/12/2017, 19/06/18, 14/09/18,
26/03/19, 19/08/19, 05/11/2019, 06/12/2019,
10/02/2021

Argument : 23/04/2021

Judgment : 07/05/2021

JUDGMENT

1) On 02/10/2016 informant Smti. Labanya Das lodged a FIR with Nathkuchi PP, stating inter alia that, stating inter alia that on 17/10/2016 at midnight when her son Dipjyoti Das and niece (hereinafter referred as victim or 'X') were enjoying cultural programme at Tihu Chowk, the accused Manab Das made obscene gestures at 'X' and also used slang languages. When the program ended, the accused approached them and in front of a control-price-shop at Tihu Chowk, the accused again made obscene gestures at 'X' and also used slang languages. When Dipjyoti Das objected & tried to protest 'X', the punched Dipjyoti Das & broke his nose. Dipjyoti Das was profusely bleeding & was immediately taken to Tihu Medical and was referred to another hospital from there.

2) On receipt of the FIR, Tihu Nathkuchi PP made GDE No 418 dtd.22/10/2016 and forwarded it to the O/C, Tihu PS for registering a case. The O/C, Tihu PS registered it as Tihu PS Case No. 123/2016 u/s 325 Indian Penal Code (hereinafter referred to as 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 & their statements recorded. The

statement of the victim u/s 164 Criminal Procedure Code (hereinafter referred to as CrPC) was duly recorded. On completion of the investigation, a prima facie case having appeared against the accused Manab Das, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against him u/s 325 IPC r/w s.12 POCSO Act.

3) Cognizance was taken u/s 325 IPC r/w s.12 POCSO Act, and on receiving summon, the accused Manab Das appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available in the case record and case diary, and prima facie material having appeared u/s 325 IPC r/w s.12 POCSO Act, charges were framed and the content of the charge were read-over and explained to accused Manab Das, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 325 IPC r/w s.12 POCSO Act against the accused, the prosecution side examined 11 witnesses & exhibited 9 documents. Defence-side declined to produce 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 -
- a) Whether on 17/10/2016 at midnight at Tihu Chowk, the accused Manab Das committed sexual harassment on the victim 'X', thus committing **offence u/s 12 of POCSO Act?**
 - b) Whether the accused Manab Das, on the same day, time and place, voluntarily caused grievous hurt to Dipjyoti Das by means of blunt weapon, thus committing **offence u/s 325 IPC?**

DISCUSSION, DECISION & REASONS THEREOF:

6) I heard the arguments forwarded by the Ld. Special Public Prosecutor and the Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charges are analyzed herein below individually in light of the materials available on record and the argument forwarded by both sides.

Charge U/s 12 POCSO Act

7) To be convicted u/s 12 POCSO Act it must be proved that the accused Manab Das committed sexual

harassment on the victim 'X', who was a minor at the time of the incident.

My Decision & Reasons Thereof:

8) **PW-1/ victim** deposed that she along with her brother (cousin) Dipjyoti Das & her friend Himashree Kalita were watching a function at Tihu Chowk, and at around 12:00 am some boys started using slang language against them. PW-1 turned & saw that the accused was present amongst those boys. PW-1 further deposed that the accused made obscene gesture towards her. When PW-1 & her companions came out from the function, these boys followed them. Near Bahumukhi Samabay Samittee office the accused along with 3-4 other boys approached them & the accused said that PW-1 is good to have sex with. When PW-1's brother objected to such comments, the accused caught hold of PW-1's brother's shirt and punched his nose. PW-1 & her companion raise alert & when the police came, the accused and other boys fled. During cross-examination PW-1 denied the suggestion that she didn't tell the I/O that the accused said that PW-1 was good to have sex with.

9) In light of above evidence of victim/PW-1, I went through her statement u/s 164 CrPC & it is seen that in

her statement she mentioned all the things that she narrated before the Court. She also stated that the accused told that PW-1 was good to have sex with. However, defence-side during cross-examination, put the suggestion to her that she didn't tell all these to the I/O, which the victim denied. So, I went through the evidence of the **I/O Gopal Talukdar (PW-11)**. He stated that the victim/PW-1 didn't tell him that the accused said that PW-1 was good to have sex with. So, the question that arises, is whether the statement u/s 164 CrPC can be used as corroborative evidence to support the evidence of PW-1, though in her statement u/s 161 CrPC she specifically didn't mention that the accused said that PW1 was good to have sex with. Criminal law is clear that, a statement given by a witness u/s 164 CrPC., is like a 'previous statement' given during investigation u/s 161 CrPC. It is not 'substantive evidence' adduced before the Trial Judge, because it was not recorded in the presence of the accused. Because it was recorded '*res inter alia acta*', i.e, recorded in the absence of the accused and from a witness during investigation. However, even if the victim specifically mentioned for the 1st time during evidence, the exact slang language used by the accused, it can be relied upon if supported by other witnesses. Furthermore, the

fact that the accused used slang language against the victim (without specifically mentioning the words) & made obscene gestures to her, remained unassailed.

10) Next relevant witness is **PW-9 Dipjyoti Das**. He deposed that informant Labanya Das is his mother and victim is his cousin sister & that, he recognises the accused. PW-9 deposed that, on the night of incident some boys teased PW-1 & also beat him. However, PW-9 stated that the accused Manab was not present amongst those boys. During his cross-examination PW-9 reiterated that accused Manab was not present at the time of the incident. Thus, what we see from the evidence of the eye-witness PW-9 is that, he has completely exonerated the accused from the incident & deposed that the accused was not even present at the time of the incident. Thus, PW-9 being the 2nd most vital witness for the prosecution, totally rebuked the evidence of the victim/PW-1 that the accused teased her & passed lewd comments & also assaulted PW-9.

11) The next vital witness is **PW-8 Himashree Kalita**, who PW-1/victim claimed was her companion during the whole incident. She deposed that she went to the function with her mother & also returned home with my mother. On the next day she heard that there was a

quarrel between the accused and PW-1, however, she doesn't know why. Her cross-examination revealed that she has absolutely no idea why the case was lodged & what was the incident. Thus, even this apparent eye-witness of the incident rebuked the evidence of the victim/PW-1 and showed absolute ignorance about the incident.

12) **PW-2 Labanya Das** is the informant & she claimed that she along with her son Dwipjyoti (PW-9) & niece/victim (PW-1) were returning from the function, the accused teased PW-1 very badly & told Krishna that now she is best for having sex. PW-2 further deposed that, PW-9 asked the accused not to talk like this, at that, the accused punched PW-9's nose and broke it. During cross-examination she denied the suggestion that she didn't tell the I/O that, the accused told that PW-1 is fit for having sex & that PW-9 objected to such comment. I have closely gone through the FIR & the evidences of PW-1 & PW-9. In the FIR it is not mentioned that PW-2/informant accompanied PW-1 & PW-9 to the function, and rather, it states that PW-1 & PW-9 were in the function and is absolutely silent about the presence of PW-2 at the place of occurrence. Furthermore, PW-1 & PW9 is also absolutely silent about

the presence of PW-2 at the place of incident or that she saw the incident. Though, **PW-5 Darpana Das** (victim's mother) claimed that PW-2 went with PW-1 & PW-9 for the function, however, this fact not being in the FIR or supported by PW-1 & PW-9 themselves, remains uncorroborated. Thus, I am of the opinion that there is no concrete evidence to prove that PW-2/informant heard or saw the incident herself.

13) **PW-3 Arup Das, PW-4 Dhrituraj Das, PW-6 Thaneswar Dass & PW-7 Arpana Das** are independent witnesses & claimed by the prosecution to be eye-witnesses. However, when they stood in the dock, all these witnesses claimed that they heard there was a fight during the function but they have no knowledge as to what exactly happened.

14) Thus, combined reading of all the above evidences reveals that, even though PW-1/ victim & PW-2/informant claimed that the accused used slang language and made obscene gestures at PW-1, however, the most vital eye-witness PW-9 totally exonerated the accused and deposed that he was not even present. The other vital witness & eye-witness (PW-8) claimed that she has absolutely no knowledge about the incident.

Thus, it is seen that evidence of PW-1 remained unsupported by her two most vital witnesses.

15) In view of the above discussions, it is held that **prosecution failed to establish the foundation fact that the accused Manab Das committed offence u/s 12 POCSO Act.**

Charge U/s 325 IPC

16) To be convicted u/s 325 IPC it must be proved that the accused Manab Das voluntarily caused grievous hurt to Dipjyoti Das by means of blunt weapon.

17) It was claimed in the FIR, and also by PW-1/victim & PW-2/informant that the accused punched PW-9 Dipjyoti Das on the nose and broke it. **PW-10 Dr. Dipjyoti Barman** is the Medical Officer of the case (herein after referred to as M/O) & he deposed that PW-9 Dipjyoti Das sustained grievous injury by blunt object. During cross-examination he mentioned that there was no police requisition was given at the time of examination & that the injury maybe caused by fall also. However, considering the fact the injured person (PW-9 Dipjyoti Das) himself has exonerated the accused and deposed that the accused was not even present when

PW-9 was being assaulted, there appears no materials against the accused as to the assault.

18) Hence, in view of the above discussions, it is held that the prosecution failed **to prove beyond all reasonable doubt that the accused Manab Das committed offence u/s 325 IPC.**

19) Thus, in view of the above discussions, it is held that **prosecution failed to establish the foundational facts u/s 12 POCSO Act** against the accused Manab Das and also **failed to prove beyond all reasonable doubt the charge u/s 325 IPC** against the accused Manab Das.

ORDER

20) Discussions made in the prior paragraphs revealed that the prosecution failed to establish the foundational facts u/s 12 POCSO Act against the accused Manab Das and also failed to prove beyond all reasonable doubt the charge u/s 325 IPC against the accused Manab Das. Hence, **accused Manab Das is acquitted from the charges u/s 325 IPC r/s s.12 POCSO Act.**

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused shall stand cancelled after period of 6 months & bailor accordingly discharge.

Any seizure made be disposed of as per law.

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 **7th May'2021.**

(Smti. Munmun B. Sarma)

Special Judge (POCSO)

Nalbari

APPENDIX

(A) Prosecution Witnesses:

- i. PW 1 : 'X' (Victim)
- ii. PW 2 : Labanya Das (Informant)
- iii. PW 3 : Arup Das
- iv. PW 4 : Dhrituraj Das
- v. PW 5 : Darpana Das
- vi. PW 6 : Thaneswar Das
- vii. PW 7 : Arpana Das
- viii. PW 8 : Smti Himashree Kalita
- ix. PW 9 : Sri Dipjyoti Das
- x. PW 10 : Dr. Dipjyoti Barman (M/O)
- xi. PW 11 : ASI Gopal Talukdar (I/O)

(B) Prosecution Exhibited Documents:

- i.Ext-1 : Victim Statement u/s 164 CrPC
- ii.Ext-1(1) & 1(2) : Signatures of victim/ PW-1
- iii.Ext.2 : Seizure List
- iv.Ext.2(1) : Signature of PW-5 Darpana Das
- v.Ext 6 : Medical Examination Report
- vi.Ext 6(1) : Signature of PW-10/ MO
- vii.Ext 7 : GD Entry in the CD
- viii.Ext 8 : FIR
- ix.Ext 8(1) : Entry by O/C, Tihu PS
- x.Ext 8(2) : Signature of O/C, Tihu PS

- xi.Ext 9 : Sketch Map
- xii.Ext 9(1) : Signature of PW-11/ IO
- xiii.Ext 10 : Charge Sheet
- xiv.Ext 10(1) : Signature of PW-11/ IO

(C) **Defence Witnesses** : Nil

(D) **Defence Exhibited Document** : Nil

(Smti. Munmun B. Sarma)

Special Judge (POCSO)

Nalbari