

**IN THE COURT OF SPECIAL JUDGE(POCSO) ::NALBARI****Present : Farhana Sultana**

Special Judge, Nalbari.

**Date of Judgment : 05-09-2022****SPL. (P) CASE NO. : 12/2019***U/S Sec. 8 of Protection of Children from Sexual Offences Act, 2012.***Complainant : State of Assam**Represented by : Sri K.K Sarma, Ld. Special Public  
Prosecutor**Accused : Tridip Barman**  
S/O- Prafulla Barman  
Vill- Sripur  
PS- Ghagrapar  
Dist-Nalbari, Assam.

Represented by : Pankaj Sarma, Advocate.

- |    |                                      |   |            |
|----|--------------------------------------|---|------------|
| 1. | Date of offence                      | : | 01-01-2019 |
| 2. | Date of FIR                          | : | 03-01-2019 |
| 3. | Date of Charge Sheet                 | : | 31-01-2019 |
| 4. | Date of Framing of Charge            | : | 06-06-2019 |
| 5. | Date of Commencement of Evidence:    | : | 02-09-2019 |
| 6. | Date on which judgment reserved :    | : | ---        |
| 7. | Date of Judgment                     | : | 05-09-2022 |
| 8. | Date of the Sentencing Order, if any | : | ---        |

**Accused Details :**

<b>Rank of accused</b>	<b>1</b>
<b>Name of Accused</b>	<b>Tridip Barman</b>
<b>Date of Arrest</b>	<b>04/01/2019</b>
<b>Date of Release on Bail</b>	<b>22/01/2019</b>
<b>Offences charged with</b>	<b>U/S 8 of POCSO Act</b>
<b>Whether Acquitted or Convicted</b>	<b>yes</b>
<b>Sentence Imposed</b>	<b>---</b>
<b>Period of detention undergone during trial for purpose of Sec 428 CrPC</b>	<b>18 days</b>

**J U D G M E N T**

1. On 3/01/2019 one Bhargab Kr. Das lodged an ejahar before the O/C, Nalbari Sadar PS stating inter alia that 1<sup>st</sup> January/2019 he along with his family entered into HAISAL RESORT at about 10 pm situated at 31 No National Highway at Barzar, Barama. Then one man got down from a car and came near them consuming liquor and caught hold his daughter Pragya Jonak (hereinafter referred as Victim 'X')'s hand and kissed on her right

hand forcefully. Then his wife Subhalakhmi Kataki pushed him and brought back his daughter to the car. Hence, this case.

2. On receipt of the FIR, O/C, Nalbari PS registered it as Nalbari PS Case No. 07/19 u/s 354 of Indian Penal Code (hereinafter referred to as IPC) R/W Sec. 8 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 were recorded. Victim's statement 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 accused Tridip Barman, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against accused him u/s 354 IPC R/W 8 of POCSO Act.

3. Cognizance of offence was taken against accused Tridip Barman u/s 354 IPC R/W Sec. 8 of POCSO Act, 2012 and summon were issued to the accused. On receiving summon, the accused appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on case record and case diary, a prima facie case having appeared u/s 8 of POCSO Act, 2012, charge was framed u/s 8 of POCSO Act against the accused and the content of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. To prove the offence u/s 8 of POCSO Act, 2012, against the accused person, the prosecution side examined 9 witnesses & exhibited 4 documents. Defense did not examine any witness. The accused person's case was that of total denial.

5. The **points for determination** are -

i) Whether the accused on 01/01/2019 at about 10 pm at Barjar, Barama, near 31 No National Highway under Nalbari PS committed sexual assault upon the victim 'X' **thus committing offence u/s 8 of POCSO Act ?**

**Arguments forwarded by Both Sides –**

6. Learned Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused did in fact aggravated sexual assault upon the victim. He prayed that maximum punishment should be given.

7. On the other hand, learned defense counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence of all the PWs adduced before the court and the statements of the witnesses recorded u/s 161 and 164 of CrPC. Learned defense counsel has further submitted that the victim has nullified the prosecution case and from the evidence of the victim, no ingredients of offence is made out against the accused. He also, argued that the accused never sexually assaulted her. So, Court should consider that aspect and accordingly pronounce judgment.

**DISCUSSION, DECISION AND REASONS THEREOF**

8. 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 charge u/s 8 of POCSO Act, 2012 are analyzed herein below in view of the materials available on record and the argument forwarded by both sides.

9. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

10. Evidence of the victim PW-5, reflects that, on the day of occurrence, when they were in a resort for dinner, and after dinner they were approaching their car, to return home, the accused, in a drunken condition caught her and kissed her hand. Seeing this her mother pushed him and took her to their car. On their way back, the victim told her father, about the incident. According to the victim, she came to know the name of the accused after seven days of the incident. She did not know him prior to the occurrence. This evidence of the victim has been corroborated by her mother and father, the Informant.

11. However, in his evidence father of the victim stated that, he had lodged the case against the accused on suspicion. It is apparent from the record that, the accused was not known to any of the family members of the Informant, including him at the time of the incident. It is also, apparent from the evidence on record that, at the time of the incident, neither the victim nor her mother had inquired

about the identity of the accused. They just came back to their car and drove off. The Informant came to know about the incident after he sat on his car and started for home. There is nothing on the record to show that the Informant went back to the resort to find out the identity of the accused.

12. PW-1, father of the victim has stated that, after the incident he made an inquiry regarding the identity of the accused and lodged the ejahar. But, he has not disclosed anything from where he got the identity of the accused. There was no possibility of getting the identity of the accused from the resort, as it has already come on record from the evidence of PW-2, Manager of the resort that they do not maintain any record of the visiting guests.

13. PW-1, disclosed that, after he lodged the ejahar, police arrested the accused and produced, before him and his victim daughter and he and his victim daughter identified the accused. But, Ld. Defense Counsel has argued that, at the time of the incident PW-1, was not present at the spot and so there is no possibility that he could have seen the accused. At the same time victim in her cross examination has stated that she did not meet the accused after the incident took place. So, it is clear that victim did not identify the accused. Hence, it is found that, PW-1, was not stating the truth and that there was no way of knowing the identity of the person who had committed the offence. Hence, identity of the accused could not be established by the Prosecution.

14. Prosecution has examined three independent witnesses, PW-2, Manager of the resort, Sri Jayanta Kalita, PW-3, Sri Plaban Das

and PW-4, Sri Pankaj Das. None of the said witnesses had seen the occurrence taking place. PW-3 and 4 stated that, the victim and her elder brother sat with a group of young men, who were enjoying the bonfire and after some time they left the place and went inside the resort. PW-2, Manager of the resort stated that, Informant and another group entered the resort to have dinner in their respective cars. Few youths were sitting near a bonfire. He heard some hue and cry and by the time he came out both the parties left the resort. Later he came to know from Police that one of the youths caught hold of the victim and kissed her.

15. The next argument advanced by the Ld. Defense Counsel is that, there was no explanation of delay of lodging the ejahar by the Informant. Nowhere in his evidence also, the Informant had explained about the delay in lodging it. However, from the evidence it is clear that, as the accused was not known to the Informant or any of his family members, he had to inquire about his identity and then lodge the ejahar.

16. Again Ld. Defense Counsel has argued that, according to the evidence of I.O, statement of the victim u/s 161 and 164 of Cr.P.C, were recorded after fifteen days of lodging of the ejahar. The incident took place on 1.1.2019. So, it is clear that, there were almost seventeen days gap between the date of occurrence and the recording of statement and the Informant and the victim got ample scope of fabrication of the case against the accused. Such inordinate delay in recording the statement of the victim is a serious lacuna in the Prosecution case, benefit of which goes to the accused.

17. Ld. Defense Counsel has also, submitted that, elder brother of the victim was also, with her at the time of the occurrence, but, neither I.O, recorded his statement nor cited him as a witness in this case. Victim's elder brother was a material witness by dint of his presence at the place of occurrence, but Prosecution has withheld him from appearing before the Court, and according to section 114 (g) of the Evidence Act, presumption can be drawn that if he would have been present his evidence would have gone against the Prosecution. Hence, non examination of elder brother of the victim is also, a lacuna in the Prosecution case, which effects it adversely.

18. In view of the above discussion it is found that, Prosecution has not been able to establish the foundational facts of the case on the standard of preponderance of probability.

19. It is pertinent to mention here that, the trial under the POCSO Act is unique in the sense that, in this Act Prosecution has been armed with the reverse presumptions as depicted u/s 29 and 30 of the Act.

20. Section 29 of POCSO Act says that, **where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 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.** It has been already decided in a number of adjudications by the Hon'ble Supreme Court and various High Courts that before the presumption in law under [Section 29](#) of the Act comes into operation against an accused,



the prosecution must be able to prove the existence of certain foundational facts in course of the trial which would satisfy a prudent man that such a thing had indeed happened at the instance of the accused.

21. As it has been already held that prosecution has not been able to prove the foundation and facts of the case. Hence, the presumption u/s 29 of the POCSO Act cannot be resorted to. Accordingly, the Prosecution is held to have failed to prove the guilt of the accused Tridip Barman, u/s 8 of POCSO Act and the case of the Prosecution is completely doubtful. Hence the accused Tridip Barman deserves to be acquitted, on benefit of doubt.

22. As regards the question of compensation, I do not find it to be a fit case for consideration for payment of compensation, as in my opinion the allegations brought by the victim is not true, and the same could not be proved.

### **O R D E R**

23. From the discussion made above, it is seen that the prosecution has miserably failed to prove the offence u/s 8 of POCSO Act, 2012 against the accused. Hence, **accused Tridip Barman is found not guilty and is acquitted from the charge of offence u/s 8 of POCSO Act, 2012.**

24. The accused persons are set free at their liberty forthwith.

25. Bail bond furnished by the accused shall stand canceled after period of 6 months.

26. The seized articles, if any be disposed of according to law.  
Given under my hand and seal of this court on this the 5th  
day of September/2022.

**(Farhana Sultana)**

Special Judge  
Nalbari

Dictated & corrected by me

Special Judge  
Nalbari

**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**

**(A) Prosecution:**

<b><u>SI Rank</u></b>	<b><u>Name</u></b>	<b><u>Nature of Evidence</u></b>
i)	PW 1 : Bhargab Kr Das	Informant
ii)	PW 2 : Jayanta Kalita	Independent
iii)	PW 3 : Plaban Das	Independent
iv)	PW 4 : Pankaj Das	Independent
v)	PW 5 : Miss Pragya Jonak	Victim
vi)	PW 6 : Subhalakshmi Kataki	Independent
vii)	PW 7 : Balen Deka	Independent
viii)	PW 8 : Puspak Kalita	Independent
ix)	PW 9 : Tapan Ch. Kalita	I/O
(B)	<b><u>Defence</u></b>	None
(C)	<b><u>Court</u></b>	None

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**(A) Prosecution Exhibits :**

<b><u>Sl.</u></b>	<b><u>Exhibit No</u></b>	<b><u>Description</u></b>
i)	Ext 1	: Ejahar,
ii)	Ext 1(1)	: Signature of PW 1,
iii)	Ext 2	: Statement of victim recorded u/s 164 CrPC
iv)	Ext 2(1)to2(2)	: Signature of PW 5,
v)	Ext-3	: Statement of witness recorded u/s 164 CrPC
vi)	Ext 3(1)	: Signature of PW 6

- vii) Ext 4 : Seizure List
- viii) Ext 4(1) : Signature of PW 7,
- ix) Ext P 3 : Sketch Map,
- x) Ext P 3(1) : Signature of PW 9,
- xi) Ext P 4 : Charge Sheet,
- xii) Ext P 4(1) : Signature of PW 9.

- (B) **Defence Exhibits** : None.
- (C) **Court Exhibits** : None.
- (D) **Material Exhibits** : None

**(Farhana Sultana)**  
Special Judge  
Nalbari