

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

Special Judge,Nalbari.

Date of Judgment : 30-09-2022**SPL. (P) CASE NO. : 14/2020**

U/S Sec. 354 Indian Penal Code read with section 8 of Protection of Children from Sexual Offences Act, 2012.

Complainant : State of AssamRepresented by : Sri K.K Sarma, Ld. Special
Public Prosecutor**Accused : Ratul Das,**

S/O- Sri Ananta Das

Vill : Kundargaon, Jabrihati

P.S- Ghagrapar

Dist- Nalbari, Assam.

Represented by : Ramesh Kr Sarma, Advocate.

Date of offence : 21-04-2020

Date of FIR : 22-04-2020

Date of Charge Sheet : 30-04-2020

Date of Framing of Charge : 20-01-2021

Date of Commencement of Evidence: 09-12-2021

Date on which judgment reserved :

Date of Judgment : 30-09-2022

Date of the Sentencing Order, if any : ---

Accused Details :

Rank of accused	1
Name of Accused	Ratul Das
Date of Arrest	22/04/2020
Date of Release on Bail	19/05/2020
Offences charged with	U/S 354 rw Sec 8 of POC SO Act
Whether Acquitted or Convicted	Acquitted
Sentenced imposed	Nil
Period of detention undergone during trial for purpose of Sec 428 Cr.P.C	28 days

J U D G M E N T

1. The Prosecution case as revealed from the ejahar is that, the ejahar has been lodged by one Sri Babul Haloi on 22.04.2020, before the O.C, Ghograpar P.S, alleging inter alia that, on 21.04.2020, at about 10.30 am, taking advantage of absence of

other family members at home, the accused, trespassed into the house of the Informant and gave indecent signals to his victim daughter. When his victim daughter did not respond to his signals, the accused grabbed her and pressed her breasts. When she shouted for help, the accused Ratul Das fled away. Thereafter, his sister Kabita Haloi rebuked the Informant and his family members with filthy language involving this incident. Accordingly, he prayed to the O.C, Ghograpar P.S, to investigate into the matter and take necessary action against the accused.

2. On receipt of the ejahar O.C, Ghograpar P.S registered the case no. 166/2020, u/s 448/354/294/506/509/34 IPC read with section 8 of POCSO Act and assigned W.S.I, Sampriti Hazarika to investigate into the matter.

3. During investigation, the Investigating Officer, had seized a birth certificate of the victim, issued by Addl. District Registrar Birth and death Nalbari, examined the Informant, victim and other witnesses, prepared a rough sketch map of the place of occurrence, sent the victim for medical examination, and got her statement u/s 164 of Cr.P.C, recorded by Magistrate. She also, arrested the accused Ratul Das and forwarded him to Court. On completion of investigation the I.O, submitted charge sheet against the accused u/s 354 of IPC read with section 8 of POCSO Act.

4. Though the accused was in judicial custody, till filing of charge sheet, he was released on bail after the charge sheet was

filed. Thereafter, cognizance of offence was taken against the accused u/s 354 of IPC read with section 8 of POCSO Act. On his appearance, copies of the relevant documents were furnished to him and the Ld. Special P.P and the Ld. Defense Counsel were heard pertaining to framing of charge.

5. Considering materials on case record and case diary and upon hearing both sides prima facie materials were found against the accused U/S 354 of IPC, read with section 8 of POCSO Act. Accordingly, a formal charge was framed against the accused u/s 354 of IPC read with section 8 of POCSO Act and the same on being read over and explained the accused pleaded not guilty and claimed to be tried.

6. During trial Prosecution examined eight witnesses. After completion of Prosecution evidence, the accused was examined u/s 313 of Cr.P.C, wherein he has denied all the allegations labeled against him and declined to adduce evidence.

7. I have heard the arguments advanced by the Ld. Special P.P and the Ld.defense Counsel. I have also, gone through the record carefully and proceeded to frame the following points for determination and to decided the matter.

8. POINTS FOR DETERMINATION:

I) Whether on 22.04.2020 at about 10-30 am in the house of the Informant, the accused Ratul Das outraged the modesty of the victim?

II) Whether the accused on the same day at same time and at same place had sexually assaulted the victim ?

DISCUSSION, DECISION, REASONS THEREOF

9. Prosecution has examined the informant of the case, Sri Babul Haloi as PW 1. From his evidence it has come to light that, about one year back, when his twelve year old daughter was alone in the house, the accused, went to their house. When his daughter offered him a seat he called her to come close and told her that he wanted to touch her breast. But his victim daughter chased the accused away. In the evening when he returned home his daughter told him about the incident and the next day he lodged the ejahar. The ejahar was exhibited as Ext-1.

10. The victim of the case was examined as PW-2. She has revealed in the evidence that, about 1 and 1/2 years back the accused Ratul Das was disturbing her repeatedly. The house of the accused person's sister is adjacent to the house of the Informant and hence, he often visits their house. On the day of occurrence, she was alone in the house, when, the accused came and pushed her to the bed and touched her breasts. But, she managed to chase the accused away.

11. PW-4, is the mother of the victim, Smt. Jonali Haloi. Her evidence reflects that about two years back, she went out of home at around 7 am. When she returned, she saw her victim

daughter crying and on being asked, her victim daughter told her that the accused Ratul Das, visited their house and when victim offered him a seat, the accused called her towards him, pushed her to the bed and touched her breast and tried to rape her. She has also, stated that when the incident happened the victim raised hue and cry, hearing which Namita Haloi, a nearby relative came to the spot. Namita Haloi, PW-5 in her evidence has deposed that, hearing victim's shouting she came to their house and asked her what happened and victim told her that the accused touched her breast.

12. The case of the defense as revealed from the cross examination of witnesses and his statement u/s 313 of Cr.P.C, is that, no such incident happened on that day. The accused never went to the house of the Informant on that day, as it was full lockdown. It is also, the case of the defense that, the accused is physically handicapped in one leg and he cannot walk properly. Ld. Defense Counsel has submitted that, accused persons house is at a distance of about 15 kilometer from the place of occurrence, and it is highly improbable that during full lockdown, in absence of public conveyance, the accused being a lame person, would have travelled a distance of about 15 kilometer to go to the house of the Informant and commit the crime. Ld. Defense Counsel has also, argued that, there is a quarrel between the Informant and the sister of the accused and the Informant had threatened the sister of the accused that he will lodge false cases against her

brothers with false allegations. The accused has taken this plea in his statement u/s 313 of Cr.P.C also.

13. Ld. Defense Counsel has also, argued that, since the victim did not go through her medical examination it can be presumed that, no incident as stated by her had actually taken place. The allegation in this case is that the accused touched her breast by throwing her into the bed. So, in my opinion medical examination of the victim is not necessary for determining the real issue.

14. Ld. Defense Counsel has also, submitted that, the victim in her statement u/s 164 of Cr.P.C, Ext-2 did not state that the accused touched her breast, rather she stated that accused wanted to touch her breast and asked her whether he could. No other implication was made against the accused regarding throwing her into the bed and touching her breast in the said statement recorded u/s 164 of Cr.P.C. This fact was admitted by the victim in her examination in chief. So, he argued that, it is clear that the victim had improved upon her earlier statement made u/s 164 of Cr.P.C and deposed falsely in her evidence. This creates doubt in the Prosecution case. He has further argued that, though there were a number of other neighbours, the victim did not report that matter to anyone else. The I.O, also, did not examine any of the neighbouring people in support of the case.

15. In my opinion the aforesaid submission of the Ld.defense Counsel is not acceptable. As it is seen the incident happened inside the house, so, there is no chance of presence of any eyewitness. Since, the offence was committed secretly,

reporting of the matter to victim's parents is sufficient to lend support to the Prosecution case as corroborative evidence.

16. Another important argument advanced by the Ld. Defense Counsel is that, the Birth certificate produced in the court, as Material Object -1, is not the Birth certificate of the victim as the name reflected in M.O-1 is not that of the victim. Even if we do not accept the Birth certificate produced by Prosecution, the fact remains that the victim is clearly a minor. The accused did not challenge the age of the victim as stated by herself, her father and her mother. So, I do not have any doubt to hold that the victim was a minor girl of about 13 years, at the time of the incident.

17. After going through the record carefully and also, considering the arguments advanced by the Ld.defense counsel I am of opinion that the whole case rests on the evidence of the victim only. Now, it is a settled legal proposition that, conviction in a sexual offence case can very well be sustained basing on the evidence solely of the victim. But, the quality of the evidence of the victim should be credible and trustworthy. Her evidence should be of such quality that the court, without any doubt be able to accept what she has stated to find the guilt of the accused. In this case, we have seen that the victim in her statement before the Magistrate, Ext-2 has stated that the accused came to her and asked her to allow him to touch her breast. She did not agree. He then tried to touch it but she chased him with a broom. In Ext-2, victim did not utter a single word that the accused pushed her to bed and pressed her breasts, as she stated in her evidence. Ext-2, statement of the victim recorded by Magistrate is the very first

statement of the victim on oath, which is recorded within a short span of time after the incident have been reported, when the facts are still fresh in mind. When the victim refrained from mentioning the fact that the accused pushed her to bed pressed her breasts, it has to be presumed that she was speaking about the actual facts. In a later stage when her evidence was recorded she spoke about completely different facts. So, it is clear that, the victim developed or improved upon the original fact while deposing in the Court.

18. We know that, a statement u/s 164 of Cr.P.C of a witness is used for discrediting or impeaching the credit of a witness. If there is omission or contradiction in the statement u/s 164 of Cr.P.C, the only conclusion which can be drawn is that, the witness is not trustworthy and believable. It is seen in this case that the victim omitted to mention the main incriminating material in her statement u/s 164 of Cr.P.C, Ext-2. This in my opinion is a vital contradiction effecting the root of the case. Hence, it can be held that the victim is not worthy of credence and accordingly, her evidence cannot be acted upon to hold the accused guilty. Since, Prosecution has failed to prove to establish the foundational facts of the case the presumptions u/s 29 and 30 of the POCSO Act cannot be drawn against the accused.

19. Accordingly in view of the aforesaid discussion the prosecution has not been able to prove the case against the accused Ratul Das u/s of IPC r/w sec 8 of POCSO Act. Hence the accused Ratul Das is acquitted and set at liberty forthwith.

20. As per the compensation scheme for women victims/survivors of sexual assault/other crimes, 2018, the factors

which are to be considered are-gravity of offence and mental or physical harm or injury suffered by the victim, expenditure incurred on the medical treatment of the victim, either physical or mental, including counselling, travelling, funeral, loss of educational opportunity, loss of employment , whether the incident was a single isolated one, whether the victim became pregnant or contracted any sexually transmitted disease or HIV, etc., any disability suffered by the victim and the financial condition of the family of the victim, among others. Now, in this case, the incident was a single isolated one. The financial status of the Informant's family is acceptable. There is nothing in the record to show that the victim loss the opportunity of education of employment. Question of pregnancy or contracting sexually transmitted disease or HIV does not arise in this case. Hence, in the facts and circumstances of the case, I am of opinion that there is no necessity for payment of compensation in this case.

O R D E R

21. From the discussion made above, it is seen that the prosecution has failed to prove the offence u/s 354 of IPC read with sec 8 of POCSO Act against the accused. Hence, **accused Ratul Das is found not guilty and is acquitted from the charge of offence u/s 354 of IPC read with sec 8 POCSO Act, 2012 on benefit of doubt.**

22. The accused person is set free at his liberty forthwith.

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

24. The seized articles if any be disposed of as per law in due course of time.

25. Given under my hand and seal of this court on this the 30th day of September /2022.

Farhana Sultana)

Special Judge

Nalbari

Dictated & corrected by me

Special Judge

Nalbari

APPENDIX

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

(A) Prosecution:

<u>Sl Rank Name</u>	<u>Nature of Evidence</u>
i) PW 1 : Babul Haloi	Informant
ii) PW 2 : Chumpi Haloi	Victim
iii) PW 3 : Dr Dipti Choudhury	M/O
iv) PW 4 : Jonali Haloi	Independent
v) PW 5 : Namita Haloi	Independent
vi) PW 6 : Atul Das	Independent
vii) PW 7 : Anjali Haloi	Independent
viii) PW 8 : WSI Sampriti Hazarika	I/O

(B) **Defence :** None

(C) **Court :** None

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

Prosecution Exhibits :

<u>Sl. Exhibit No</u>	<u>Description</u>
i) Ext 1	: Ejahar
ii) Ext 1(1)	: Signature of PW 1,
iii) Ext 2	: Statement of victim u/s 164 CrPC
iv) Ext 2(1) to 2(2)	: Signatures of the PW 2,
v) Ext 3	: Medical Report
vi) Ext 3(1) to 3(2)	: Signature of PW 3,
vii) Ext P 4 /PW 8	: Sketch map
viii) Ext P 4(1) / PW 8	: Signature of PW 8
viii) Ext P 5 / PW 8	: Seizure list

- ix) Ext P 5(1)/ PW 8 : Signature of PW 8
- x) Ext P 6 / PW 8 : Charge Sheet
- xi) Ext P 6(1)/ PW 8 : Signature of PW 8

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

(**Farhana Sultana**)

Special Judge

Nalbari