

**IN THE COURT OF THE SPECIAL JUDGE (F.T.C.), LAKHIMPUR,
NORTH LAKHIMPUR.**

P R E S E N T

Sri P.C. Kalita, A.J.S.,
Special Judge (F.T.C.),
Lakhimpur, North Lakhimpur.

Special Case No.28/2018.

U/s-10 of POCSO Act.

State of Assam

-Versus-

Md. Amir Sheikh, Accused.

A P P E A R A N C E

For the State : Mr. M. Gogoi, Ld. Special P.P.
For the Accused : Mrs. M.D.G. Baruah, Ld. Advocate.

Date of evidence : 11.10.2018, 12.10.2018, 27.11.2018,
26.04.2019.
Argument heard on : 26.04.2019.
Judgment delivered on : **26.04.2019.**

J U D G M E N T

1. The prosecution case, inter-alia, in brief, is that 23.05.2017 informant Mustt. Romisa Khatun lodged an ejahar at Bihpuria P.S. alleging that on 21.05.2017 at about 2:30 p.m., while her granddaughter i.e. the prosecutrix (aged about 9 years), who was a student of class-III, had gone to the shop of accused person namely, Md. Amir Sheikh to buy biscuits, the accused person taking advantage of absence of other person, committed sexual assault on her inside his shop by pressing her chest and as the victim girl started to cry, the accused

person had left her. Again, on 23.05.2017, at about 4:00 p.m. while her said grand-daguther had gone to the shop of the accused person, at that time also, the accused person committed sexual assault on her inside his shop and when she (victim) was running away from the said shop, his neighbours namely, one Mustt. Asma Begum and Mustt. Abida Khatun saw the said incident and informed her. Thereafter, on being asked, she came to know from her victim grand-daughter about the alleged occurrence.

2. On receipt of the ejahar, the O/C, Bihpuria P.S. registered a case vide Bihpuria P.S. Case No.442/2017 dtd. 23.05.2017, u/s- 8 of POCSO Act and then the police conducted the investigation of the case and after completion of the investigation submitted charge-sheet u/s- 8 of POCSO Act against the accused person Md. Amir Sheikh showing him as absconder.

3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, a charge under section- 10 of POCSO Act is framed against him, the same is read over and explained to him to which he has pleaded not guilty.

4. During trial prosecution has examined as many as 6 (six) witnesses. After closure of the prosecution evidence, the accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINT FOR DETERMINATION:**

i) Whether the accused person, on or about 21.05.2017 at about 2:30 p.m. and thereafter, on 23.05.2017 at about 4:00 p.m. at

Mornoj Grazing under Bihpuria P.S, had committed aggravated sexual assault on the person of victim girl (aged about 9 years), grand-daughter of informant Mustt. Rumisha Khatun, inside your shop house, and thereby committed an offence punishable under section 10 of POCSO Act, as alleged ?

DISCUSSIONS, DECISION AND REASONS THEREOF:

6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.

7. PW.1, Mustt. Asma Begum (neighbour of informant), stated that she knows both the parties including the victim girl, who is about 9 years old. The occurrence took place about one year back. She herself did not see the occurrence. On the day of occurrence, after returning from her school, she saw gathering of people near her house. Later on, she heard that quarrel had taken place between the parties in connection with a girl. She knows nothing as to what had happened thereafter.

8. PW2, Md. Sofiqul Islam, stated that he knows both the parties. He wrote an ejahar at the police station. Police did not record his statement. He does not know anything about the occurrence.

9. PW3, Mustt. Abida Khatun, stated that she knows both the parties. She does not know anything about the alleged incident.

10. PW.4, Md. Rafiqul Islam (son of informant), stated that the victim girls is his niece. He knows the accused person. He does not know anything about the alleged incident, as at that time he was at Arunachal Pradesh.

11. PW5, Mustt. Rumisa Khatun, stated the informant is her mother and the victim girl is her grand-daughter. she knows the

accused person. The occurrence took place about 2 years back. On the day of occurrence, her victim grand daughter had gone to the shop of accused person taking Rs.2000/- with her and she wanted to purchase some goods in the said shop of accused. At that time, the accused person having found the said money in the hands of the victim girl, rebuked her as to where she had found it and he (accused) asked her to return the said money to her mother. Thereafter, the victim girl went back to her house by crying, for which some nearby people gathered there, who compelled her to lodge case against the accused person. Someone had written one ejahar and as asked, she put her signature thereon. Ext.1 is the said ejahar and Ext.1(1) is her signature thereon. She is not aware of the contents of the ejahar. The victim girl did not disclose before her about any bad acts committed by the accused person.

12. PW6, the victim girl, stated that the informant is her grandmother. She knows the accused person, who is her grandfather. The occurrence took place about 2 years back. On the day of occurrence, at about 4:00p.m. she had gone to the shop of her accused grandfather. She had shown one note of Rs.2000/- and wanted to purchase chocolates with the said note. At that time, the accused rebuked her and asked her to give back the same to her grandmother and then, out of fear she started crying and returned home. Some nearby people gathered at her house and as per instruction of villagers, her grandmother lodged a case against the accused person. In fact, the accused person did not commit any bad acts upon her. Police recorded her statement and also sent her to the Court for recording her statement. Ext.2 is her statement recorded u/s- 164 of Cr.P.C. and Ext.2(1) to 2(4) are her signatures thereon.

Appreciation of evidence:
(Offence U/s- 10 of POCSO Act)

16. **There is no eye witness to see the occurrence.**

17. PW6, granddaughter of informant (PW5) is the victim cum prime witness in the instant case.

18. Her deposition is that on the date of occurrence, at about 4:00 p.m. when she had gone to the shop of her accused grandfather taking Rs.2000/- with her to purchase chocolates, then, the accused rebuked her and asked her to give back the same to her grandmother. The victim then out of fear started crying and returned home. Her further deposition is that in fact, the accused person did not commit any bad acts upon her.

The victim, in her evidence, nowhere uttered a single words that the accused person did any kind of penetrative sexual assault upon her. Rather, during cross, she clearly stated that she had stated before the Magistrate, in her statement recorded u/s- 164 of Cr.P.C., as instructed her by other people.

19. PW1, PW2, PW3 and PW4 all are hearsay witnesses and they do not support at all the prosecution story.

20. PW5 (grandmother of victims), also has not stated anything against the accused person regarding any aggravated sexual assault on her victim grand-daughters (PW6) by the accused. She categorically stated that at the instigation of the co-villagers, she lodged the ejahar (Ext.1). The ejahar was written by some body and she does not know about its contents.

So, the ingredients of offence u/s- 10 of POCSO Act are lacking and no case is made out against the accused person.

21. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s-10 of POCSO Act against the accused person beyond all reasonable doubts. Hence, I acquit him from the said offence.

22. The accused person is set at liberty forthwith and his bail bond shall remain in force for another 6(six) months from today.

23. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 26th day of April, 2019.

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Transcribed & typed by me:
Shri D. Chetia, (Steno)

APPENDIX:

Prosecution witnesses:

PW.1, Mustt. Asma Begum

PW2, Md. Sofiqul Islam

PW3, Mustt. Abida Khatun

PW.4, Md. Rafiqul Islam

PW5, Mustt. Rumisa Khatun

PW6, the victim girl

Prosecution exhibits:

Ext.1 is the said ejahar

Ext.2 is her statement recorded

Defence witnesses:

Nil .

Defence exhibits:

Nil

(P.C. Kalita)
Special Judge, (F.T.C),
Lakhimpur, North Lakhimpur.