

IN THE SPECIAL COURT :: SONITPUR, TEZPUR:: ASSAM

PRESENT:- N. AKHTAR, AJS
Addl. Sessions Judge,
Sonitpur::Tezpur.

Special (POCSO) Case No. 30 of 2018.

U/s. 18 of

Protection of Children from Sexual Offences Act, 2012.

State of Assam

-Vs-

Rabiul Islam

FOR THE PROSECUTION	:-	Mr. S.K.Moitra, Special PP.
FOR THE DEFENCE	:-	Mr. B. Borthakur, Advocate.
EVIDENCE RECORDED ON	:-	31.05.18, 08.10.18, 15.11.18, 29.12.18, 25.03.19, 27.06.19, 14.08.19 and 04.03.2020.
ARGUMENTS HEARD ON	:-	22.02.2021.
JUDGMENT DELIVERED ON	:-	25.02.2021.

JUDGMENT

1. It was on the night of 12.03.2018 at around 8.30 pm. A hue and cry suddenly ensued in the Girls' Hostel of Gudamghat Khadizatul Kuwora Madrasatul Banat. The accused allegedly unauthorizedly entered the hostel campus and tried to rape a girl student whereupon the girls raised alarm. The caretakers of the Madrasa came to the campus

having heard the screams of the girls and allegedly apprehended the accused. A little while thereafter, the brothers of the accused came there and attacked the crowd but all of them were nabbed by the crowd and handed over to police. Hence, the FIR was lodged.

2. Based on the said FIR, a case being Chariduar PS Case No. 78/2018 U/s 448/354-A/294/376/511/298/500 IPC was registered and after completion of investigation, the accused was charge-sheeted U/s. 448 IPC read with Sec. 8 of the POCSO Act, 2012.
3. On appearance of the accused person, copies of relevant documents were furnished to him in compliance of the provision of Sec.207 CrPC. Having heard both the sides and considered the materials on record, formal charges were framed against the accused u/s 18 of the POCSO Act, 2012 and had been read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. During trial, the prosecution has examined as many as 9 (Nine) witnesses including the investigating officer. The accused was examined U/s 313 CrPC. Defence has not adduced any evidence. At the end of the trial, the argument advanced by the learned counsel for both the sides were heard at length.

POINT FOR DETERMINATION

- *Whether the accused person on the alleged night and time of occurrence, attempted to commit offence punishable under POCSO Act or to cause such an act to be committed and in such attempt, did any act towards the commission of such the offence, on the girl student of Gudamghat Khadizatul Kuwora Madrasatul Banat and thereby committed an offence punishable U/s 18 of the POCSO Act, 2012?*

DISCUSSIONS, DECISIONS AND REASON FOR DECISION

5. I have heard the arguments advanced by learned counsel for both the sides and also gone through the evidence on record including the law relevant to the issue in hand.
6. The learned Special Public Prosecutor had argued that the evidence on record clearly establishes the case of the prosecution and the evidence of the victim girls alone is sufficient to hold that the accused is guilty of the offence with which the accused is charged. He had therefore, argued that the accused needs to be punished accordingly.
7. Per contra, the learned defence counsel had argued that this is a case where the accused has been falsely implicated and that there is no convincing material on record that the accused had committed the offence as alleged. It is further argued that the alleged victim girls could not even identify the accused on the night of the alleged occurrence which is clear from their evidence. It is therefore, submitted that the accused deserves to be acquitted from the charges.
8. I have duly considered the arguments in the light of the evidence adduced. It is worthwhile to indicate at the outset that out of the witnesses examined in this case, PW1 (Md. Abdul Mallik), PW6 (Md. Salimuddin) and PW8 (Md. Rahmat Ali) are declared hostile because they did not support the prosecution case. PW2 (Md. Ali Hussain) is the informant. He has deposed that the occurrence took place on 12.3.2018 at about 8/8-30 pm. The incident took place in the girls' hostel of Khadijatul Kuwara Madrasatul Banat. The accused entered the hostel while the girls were studying. The accused had shown obscene gestures to two inmates of the hostel (names withheld). The accused wanted to hold the girls by hand but they raised alarm. On hearing hulla, the Imam of the hostel and others rushed to the hostel and caught hold of the accused. PW2 was informed over telephone. PW2 came to the PO but meanwhile, the brothers of the accused came to the PO and started

abusing the people but the police came and they were all handed over to police.

9. It however, appears from the cross-examination of PW2 that no one had informed the police about the incident before arrival of PW2. It further appears that police came to the PO on the following morning. He has further deposed that he met only two brothers of the accused at the PO. It further appears from his evidence that one Sayeb Ali is the friend of the accused and on the day of the incident, the accused stayed in the house of said Sayeb Ali and in the morning, a hulla took place in the house of Sayeb Ali and later, he got to know that the accused was tied up in the house of Sayeb Ali.

10. Thus, though PW2 claims that he arrived at the PO immediately after the incident, but he did not find the accused there. He only met the two brothers of the accused at the PO. His own evidence further goes to show that on the following morning, a hulla took place in the house of Sayeb Ali and the accused was tied up by the people. PW1 also stated in his cross-examination that about ½ miles away from the hostel, one person was apprehended by the people but that person was not the accused in the dock. Thus, the fact that the accused was caught red handed at the campus of the girls' hostel is not established by the evidence on record. PW4 (Md. Ali Ahmed) also did not see the occurrence himself. He came to the PO hearing hulla and got to know that a man entered the campus of the girls' hostel and wanted to rape a girl but an alarm was raised and he was caught by the crowd which gathered there. People also told him that the name of the said person was Rabiul Islam. Thus, it appears that PW4 only heard from the people gathered there that the name of the apprehended culprit was Rabiul Islam but he did not personally see any such apprehension.

11. PW5 (Name withheld) is one of the alleged victim girls. Her evidence shows that on the night of the alleged occurrence, while she and PW7

(Name withheld) were studying were reading in their room in the girls' hostel, a man trespassed into the room and attempted to hold them. The man covered his face with a gamucha. They raised hulla and people gathered, chased the culprit and apprehended him. She however, did not go to see who was apprehended by the people. She had also stated that Ext-2 is the statement which she gave before the learned Magistrate. Thus, PW5 indeed could not recognize the culprit as he covered his face with a gamucha. She had stated in her cross-examination that the person standing in the dock did not do anything with her and also that she had no grievance against him. Be that as it may but it is clear from the evidence of PW5 that she could not recognize the culprit as the face was covered with a gamucha.

12. PW7 who is another victim of this case has deposed almost in the same line with PW5. She had also stated that on the night of the alleged incident, a man covering his face with a piece of cloth entered their hostel room and uttered some obscene words and tried to hold her by hand. On hulla being raised the hostel Jonab and one madam came there but meanwhile the culprit fled away. She had also clearly stated that she could not recognize the man as he covered his face with a cloth. The cross-examination of this witness was declined by the defence.

13. PW8 (Md. Rahmat Ali) did not support the case of the prosecution. So, he was declared hostile by the prosecution and was cross-examined but nothing however, has come out of his evidence to support the case of the prosecution.

14. PW9 (Sri Dwinjomoni Sarma) is the investigating officer of this case. His evidence goes to show that an FIR was received from one Ali Hussain and having registered Chariduar PS Case No. 78/2018 U/s 448/354-A/294/376/511/298/500 IPC, the investigation was entrusted upon him. He had also stated that prior to receipt of the FIR, a man came to the

police station that reported that one Rabiul Islam was apprehended by the people and was assaulted at Gudamghat Khadizatul Kuwora Madrasatul Banat. Based on the said information, GDE No. 325 dated: 13.3.2018 was made and he was verbally asked to visit the PO. He went to the PO and found the accused being apprehended by people and brought him to police station. During investigation, he recorded the statement of the witnesses including the two victim girls and also got their statements recorded U/s 164 CrPC. Finally, he submitted the chargesheet.

15. Thus, from the evidence on record, it clearly appears that the identity of the accused could not be established by the prosecution in this case. Both the victims girls stated that the culprit who entered their hostel on the night of the occurrence covered his face with a piece of cloth for which, he could not be recognized. PW5 also stated that though the accused was apprehended by the people who gathered there but she did not go to see the apprehended culprit. Thus, they could not identify the accused even in the dock. PW5 rather stated in her cross-examination that the accused standing in the dock did not do anything to her and so, she has no grievance against him. PW2 though stated in his examination-in-chief that when police came to the PO, they handed over the accused and his two brothers to the police but in his cross-examination, he had clearly stated that on reaching the PO, he found only the two brothers of the accused. Thus, his own evidence on this aspect is fully contradictory to each other. Moreover, this witness has further stated in his cross-examination that the accused stayed in the house of one Sayeb Ali on the night of occurrence and on the following morning, a hue and cry was raised in the house of said Sayeb Ali and the accused was tied up in his head. On the other hand, the investigating officer had stated that on the night of the occurrence, he visited the PO and found the accused being apprehended by the people and brought him to the police station. Thus, if the accused was tied up

by the people in the house of Sayeb Ali on the following morning, then, who the man was who was brought to police station on the night of the occurrence by the investigating officer. Thus, it appears that even on the point of apprehension of the accused by the local people, there are two contradictory stories put forward in this case and as such, no implicit reliance can be placed on the prosecution version.

16. It is true that this is a case wherein the charge is brought against the accused U/s 18 of the POCSO Act, 2021. This being a stringent legislation, the court has to appreciate the evidence in the light of the presumption U/s 29 of the Act. Nonetheless, the prosecution has to lead cogent and convincing evidence to bring home the guilt of the accused as the initial burden is always on the prosecution to prove its case.

17. In the case of **Bhupen Kalita Vs State of Assam, Crl. Appeal (J) 87 of 2017** decided on 5.6.2020, the **Hon'ble Gauhati High Court** had observed thus:

"In view of the above, in the opinion of this court, as also held by many High Courts in this regard, 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 fundamental facts in course of the trial which would satisfy a prudent man that such a thing has indeed occurred at the instance of the accused."

18. Thus, in the present case, the prosecution, as discussed above, has failed to prove the very fundamental facts, on proof of which, the presumption U/s 29 of the Act can be pressed into service as indicated in the aforesaid case law. Therefore, in the light of the facts and evidence of this case, the presumption U/s 29 of the Act can be of no

help to the prosecution while the very identity of the accused remains unestablished.

19. In the result and for the reasons and discussions made herein above, I have no hesitation in my mind in holding that the prosecution has failed to prove the case against the accused beyond all reasonable doubts. He is hence, not found guilty of any offence as charged and as such, acquitted of the same and set at liberty forthwith.

20. Forward a copy of this judgment to the District Magistrate in compliance of Sec.365 CrPC.

Given under my hand and seal of this court on the 25th day of February/2021.

Typed and Corrected by me:

Addl. Sessions Judge,
Sonitpur:: Tezpur.

APPENDIX

PROSECUTION WITNESSES:

PW1 (Md. Abdul Mallik)
PW2 (Md. Ali Hussain)
PW3 (Sri S. Bhuyan)
PW4 (Md. Ali Ahmed)
PW5 (Name withheld)
PW6 (Md. Salimuddin)
PW7 (Name withheld)
PW8 (Md. Rahmat Ali)
PW9 (Sri.D. Sarma)

PROSECUTION EXHIBITS:

Ext-1: FIR
Ext-2: Statement U/s 164 CrPC
Ext-3: Statement U/s 164 CrPC

Special (POCSO) Case No. 30 of 2018

Ext-4: Order Dated 14.3.2018

Ext-5: Sketch Map

Ext-6: Extract Copy of GDE No. 325 dated 13.3.2018

Ext-7: Chargesheet.

DEFENCE WITNESSES:

None

DEFENCE EXHIBITS:

NIL.

Addl. Sessions Judge,
Sonitpur:: Tezpur.