

**IN THE COURT OF THE SPECIAL JUDGE, BARPETA****Special POCSO Case No. 25/2017  
U/S 4 of POCSO Act**

PRESENT : Sri Chatra Bhukhan Gogoi, AJS,  
Special Judge,  
Barpeta.

Charge framed on:- 12.10.2018

State of Assam

- Vs -

Biplab Mandal..... Accused

Date of Recording Evidence on – 18.04.2019, 20.05.2019,  
20.11.2019 & 01.02.2020

Date of Hearing Argument on – 01.02.2020

Date of Delivering the Judgment on – 01.02.2020

Appearance :

Advocate for the State----- Learned Addl. P.P.

Advocate for the Accused----- Motiur Rahman, Learned Advocate

**JUDGMENT**

1. The brief fact, of the prosecution case, is that on 19.01.2018 one Sanjay Barman lodge an FIR in Sarthebari P.S. alleging inter alia that on 18.01.2018 at about 8 pm the accused person named in the FIR allegedly took his cousin (X) age about 7 years from the Asthprahar function at Neularbhitha to the bank of nearby river and allegedly committed unnatural sex/sexual assault through his anus causing bleeding injury by removing his clothes as a result of which his cousin came back home weeping and inform his ordeal. Then his cousin was immediately removed to Sarukhetri CHC for treatment which however referred him to FAAMCH, Barpeta for better treatment.

Some delay has been caused in lodging the FIR due to pre-occupation in his treatment.

2. Based on the information a case was registered being Sarthebari P.S. case No 19/14 u/s 377 IPC R/W section 4 of POCSO Act and investigated the case.

3. During the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim for medical examination, forwarded him to court for recording his statement before Magistrate u/s 164 Cr.P.C. and arrested the accused person.

4. Thereafter, on conclusion of investigation, I/O finally laid the charge sheet against accused u/s 377 IPC and section 4 of POCSO Act with a view to stand trial.

5. During the course of time, when accused appeared in court after due compliance of section 207 Cr.P.C. this court vide order dated 12.10.2018 framed formal charge u/s 4 of POCSO Act. The particulars of the offence on being read over and explained, accused pleaded not guilty and claimed trial. Since section 377 IPC has already been repealed this provision has no relevancy/application.

6. During the course of trial, the prosecution examined as 6 witnesses namely Sushil Sarkar as PW-1, Sanjay Barman as PW-2, Nitai Barman as PW-3, Paritosh Sarkar as PW-4, Sital Mandal as PW-5 and Nihar Kherkatari as PW-6 respectively.

7. On conclusion of prosecution evidence accused is examined u/s 313 Cr.P.C. he however denied the prosecution evidence as false. His plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. Now point for determination :-

1. Whether on 18.01.2018 at about 8 pm you committed penetrating sexual assault on the victim boy on the river bank as alleged ?

9. Discussion, Decision and reasons for such decision :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. On perusal of the evidence of PW-1 it appears that his evidence bears little significant for the prosecution case as he is not an eye witness but hearsay witness. He even did not meet the alleged victim after the alleged incident.

11. PW-2 Sanjay Barman who is the informant express his total ignorance about the incident. So, he all together negated the prosecution case even though he happens to be the informant of the case. PW-3 Nitai Sarkar is also the hearsay witness and he belongs to

a different village from that of informant. So, his evidence also carries little value.

12. PW-4 is the alleged victim who deposes that it was Asthprahar function in his village on the day of incident. He visited the Asthprahar function along with his mother and she has been enjoying the function sitting with another person inside. However, he has been watching the function by standing on the side. But at about 9 pm one person came and pulled him to the river bank and committed penetrating sexual assault through his anus, but he could not identify him. Later on, he came to know that it was Bipalab. On his return home he narrated the story to his mother. Accordingly, he was shifted to FAAMCH Barpeta but he could not remember whether he was treated by admitting him to the hospital. He was also produced before the Magistrate where he put his thumb impression.

13. PW-5 Sital Mandal deposed that on the day of incident while she was working in Asthprahar function she heard that one Bipalab was arrested by police for indulging "Beyakam" with a cousin of Sanjay. But in her cross examination she stated that police did not record his statement.

14. PW-6 Nihar Kherkatari who is the investigating officer, but his evidence is stereotypical in nature. In his evidence he stated that during investigation he sent part of the victim for chemical examination to ascertain whether there was semen in his pants, but no report. In his cross examination the IO stated that he did not collect the medical report of the victim as well as the seizure list etc.

15. Now, on careful consideration of the entire prosecution evidence available on record from PW-1 to PW-6 it became crystal clear that there was no eye witness to the alleged occurrence. The only evidence is the evidence of the alleged victim boy. But his evidence is also unworthy of credit in the absence of any credible support from the other prosecution witnesses available on record. Interestingly, none of the prosecution witnesses support the version of the victim boy. Therefore, after scrutiny, this court comes to definite findings that on the basis of sole and uncorroborated testimony of the victim who happens to be the minor boy at the relevant time cannot be relied on for convicting the accused person u/s 4 of POCSO Act in the absence of any corroboration from the mouth of other prosecution witnesses. Though the allegation against the accused is serious in nature, but on the basis of mere presumptions and surmises no conviction can be sustained unless prosecution has been able to produce evidence worthy of credence.

16. As against the allegations made in the FIR none of the prosecution witnesses including the informant have been able to adduce any substantive, credible and trust worthy evidence for sustaining conviction of accused u/s 4 of POCSO Act.

17. Though, by now, it is settled law that conviction can be sustained based on sole testimony of the victim but coming back to the facts of the present case, this court find it extremely difficult to sustain the conviction of accused u/s 4 of POCSO Act because of lack of credible and corroborative evidence.

18. This being the position, this court is of the considered view that prosecution miserably failed to establish the case against accused u/s 4 of POCSO Act. Therefore, this court has no option but to acquit the accused from the offence u/s 4 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.

19. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

20. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.

21. Let the case record be consigned to record room after completing the formalities.

22. Given under my hand and seal of this Court on this 1st day of February 2020, at Barpeta.

Dictated & Corrected my me

Sd/-  
(Sri C.B. Gogoi)  
Special Judge,  
Barpeta.

Sd/-  
(Sri C.B. Gogoi)  
Special Judge,  
Barpeta.

**APPENDIX**

1. The prosecution has examined the following 6 nos. of witnesses:-

PW-1 = Sushil Sarkar.

PW-2 = Sanjay Barman, the informant.

PW-3 = Nitai Barman.

PW-4 = Paritosh Sarkar, alleged victim.

PW-5 = Sital Mandal.

PW-6 = Nihar Kherkatari, the investigating officer

2. The prosecution has exhibited the following documents :-

Ext. 1 = is sketch map.

Ext.1(1) = is the signatures of I.O.

Ext. 2 = is charge sheet.

Ext.2(1) = is the signatures of S.I. Rupam Hazarika

Sd/-  
(Sri C.B. Gogoi)  
Special Judge,  
Barpeta.