

IN THE COURT OF SPECIAL JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,
Special Judge,
Barpeta.**

**JUDGMENT IN SPECIAL POCSO CASE NO. 64 OF 2019
(G.R. Case 835/2018)
Tarabari P.S. Case No. 47 of 2018**

State of Assam

-versus-

**Anower Mollah,
S/O Lt. Karim Mollah,
Resident of Khangra,
P.S. Tarabari,
District – Barpeta**

..... Accused.

APPEARANCES :

**For the State : Mr. Lalit Ch. Nath, learned Public
Prosecutor., Barpeta.**
**For the Accused : Mr. Ayen Uddin Ahmed, learned
Counsel, Barpeta.**

**CHARGE FRAMED UNDER SECTIONS 354 IPC READ WITH SECTION 8
OF POCSO ACT, 2012**

**Date of Charge : 08.07.2019,
Date of Prosecution evidence : 22.07.2019 & 13.02.2020,
Date of Argument : 13.02.2020,
Date of Judgment : 18.02.2020.**

J U D G M E N T

1). The prosecution case, in brief, is that Tarabari P.S. Case No. 47 of 2018 under Section 8 of POCSO Act, 2012 was registered on the basis of a F.I.R. lodged by the father of the victim.

In the aforesaid **F.I.R.** dated 25.02.2018, the informant Badsha

Miya, who is the father of the victim, alleged *inter alia*, that on 12.02.2018 at about 2:00 PM accused Anowar Mullah committed sexual assault upon his minor daughter aged about 11 years, when she was staying alone in her residence. On the day of alleged incident, victim's parents were working at paddy field near their house. After the alleged incident, she came out from her house out of fear and told the whole incident to her parent. Again on 22.02.2018, at about 1:00 PM, accused committed sexual assault upon the victim, when she was alone at the grocery shop of informant at Khangara.

On receipt of the aforesaid FIR by the Officer-In-charge, Tarabari Police Station, the same was registered as **Tarabari P.S. Case No. 47/2018 under Section 8 of POCSO Act, 2012.**

During the course of investigation, the victim was sent for her medical examination by the doctor, her statement under station 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused **Anower Mollah** under **Section 8 of POCSO Act, 2012** vide charge sheet **No.83/2018**, dated **31.07.2018**.

2). On production of accused, copy was furnished to him by the undersigned.

3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed against the accused under **Section 354 IPC read with Section 8 of POCSO Act, 2012 by the undersigned**. The charges were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **02 [two]** number of witnesses including the victim and medical officer were examined, on behalf of the prosecution, to prove the charge under Section 354 IPC read with Section 8 of POCSO Act, 2012. Then prosecution evidence was closed, as prayed, by learned

Public Prosecutor, Barpeta.

The Prosecution Witnesses were closed, as per prayer made by learned Public Prosecutor, Barpeta. The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor, Barpeta as well as **Mr. Ayen Uddin Ahmed**, learned Defence Counsel for the accused, who is facing trial for commission of offence **under Section 354 IPC read with Section 8 of POCSO Act, 2012.**

6). Now the points for determination before this court are as follows --

(1) Whether the accused on 12-02-2018 at about 2:00 PM within the jurisdiction of Tarabari P.S., District Barpeta, used criminal force intending to outrage the modesty of Silima Parbin, minor daughter of informant Badshi Mia and thereby committed an offence punishable under Section 354 of the Indian Penal Code ?

(2) Whether the accused on the aforesaid date, time at the grocery shop of informant at Khangara, committed sexual assault on aforesaid minor victim, daughter of above named informant and thereby committed an offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 ?

DISCUSSION, DECISIONS AND REASONS THEREOF :-

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Dr. Anima Boro [P.W.1] has stated that on 28.02.2018, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, in connection with Tarabari P.S. case No.47/2018,

victim **Silima Parbin**, aged about 11 years, D/O Badsha Mia of Khongra under Tarabari P.S., District Barpeta on being identified by Iravati Pathak, was produced before her for her medical examination, but the victim refused to undergo her medical examination, after explanation about the consequences of examination as well as her refusal.

P.W.1 exhibited her medical report vide Ext.1 and Ext.(1) & 1(2) are her signatures.

Her cross-examination was declined by the defence side.

8). Silima Parbin (P.W.-2) has stated that informant Badsah Mia is her father. She knows the accused person who is her cousin brother.

P.W.2 stated that they have got land which borders with the land of the accused person. One day, accused came to their house and caught her hand in light manner. Then, her father lodged this case.

Police examined her and sent by police for her medical examination. Police got her statement recorded u/s 164 CrPC by learned Magistrate. She told the entire incident to the learned Magistrate. Ext.2 is her statement u/s 164 CrPC and Ext.2(1), 2(2) & 2(3) are her signatures.

In her cross-examination, P.W.2 has deposed that accused did not do any indecent work or behavior towards her.

9). From a close perusal of the statement of the victim (P.W.2), who is star witness of this instant case, has deposed in her evidence that accused came to their house and caught her hand in light manner. Victim clearly stated in her cross-examination that accused did not do the alleged bad work or behavior with her. Victim also refused to undergo medical examination.

Thus, it is crystal clear from the version of the victim girl, that accused did not commit sexual assault on her. This case was lodged falsely by her father against the accused person.

Hence, there is no material on record to hold that the accused committed sexual assault on the victim, to constitute offence under Sections 354 IPC read with Section 8 of the Protection of Children From Sexual Offences Act,

2012.

10). In the case of *Utpal Mishra -versus- State of Assam, 2015 [2] GLR 542*, it has been held by the Hon'ble Gauhati High Court in **Para No.- 22** of its judgment as follows:

PARA NO-22

The principals of criminal jurisprudence are that :

a) There should be legal, reliable and unimpeachable evidence to prove that the prosecution story "must be true" rather than "may be true";

b) It is settled principle of criminal jurisprudence that more serious the offence, stricter is the degree of proof;

c) Standard of proof in a criminal case: burden is always on the prosecution and the same never shifts. Prosecution can never derive any benefit from the weakness of the defence version;

d) Holding a witness "implicitly reliable" leads to denial of judicial consideration of the infirmities in evidence;

e) Defence witnesses can not be disbelieved by relying on conjectures and surmises: they are entitled to equal treatment with those of the prosecution;

f) If two views are possible in a criminal case, the view favourable to the accused should be accepted;

g) The averment/allegation with respect to the commission of rape has got to be clear and specific for basing a finding of guilt rather than being just inferential. The evidence/averments/allegations must fulfill the ingredients of offence of RAPE as defined under Section 375 of IPC;

h) The prosecution must prove the case in the manner in which they are alleged to have caused. It is elementary where the prosecution has a definite and positive case, it must prove the whole of that case;

i) In a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such situation.

11). It is true that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the case of ***Dattu Ramrao Sakhare-versus-State of Maharashtra***, reported in ***[1997] 5 SCC 341***, the Hon'ble Apex Court has held that - **"A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In others, even in the absence of oath, the evidence of a child witness can be considered under Section 118 of Indian Evidence Act, provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored."**

12). The ratio as laid down in the above case is that the testimony of a child witness is attributed the same kind of credibility that is attached to the statement of any other witness if the testimony is consistent.

In the present case, the victim (P.W.2) has not been found consistent on the material particulars with regard to the incident. It is interesting to mention here that victim (P.W.2) did not utter a single word that accused sexually assaulted the victim in her evidence.

13). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused **Anower Mollah** to warrant his conviction under Section 354 of IPC read with Section 8 of POCSO Act, 2012, beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal, at least, on benefit of doubt, which I accordingly do.

14). In the result, accused **Anower Mollah** is **acquitted** of the charge under **Section 354 IPC read with Section 8 of POCSO Act, 2012**, levelled against him, on benefit of doubt. His bail bond stand discharged.

His bail bond stand discharged.

15). Given under my hand and seal of this Court on this **18th day of February, 2020**.

Sd/-

Special Judge, Barpeta

A P P E N D I X

(A) **Prosecution witnesses:**

P.W.1 = Dr. Anima Boro, the M.O.,

P.W.2 = Silima Parbin, the victim.

(B) **Prosecution Exhibits:**

Ext.1 = Medical Report,

**Ext.1(1)
& Ext.1(2)** = Signature of the M.O.,

Ext.2 = Statement of the victim recorded
under Section 164 CrPC.

**Ext.2(1), 2(2)
& 2(3)** = Signature of the victim,

(C) **Defence witnesses:** Nil.

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-

Special Judge, Barpeta.