

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS
JUDGE 2nd COURT, TAMLUK, PURBA MEDINIPUR

Present: Smt. Rina Sawoo
Additional Sessions Judge
2nd Court, Tamluk,
Purba Medinipur.

S.T. 133 of 18
SC 25(7)17
CNR no. WBEM01-002802-2018

(Arising out of Tamluk P.S. Case No : 288 of 2017 dated: 14-06-17 u/S
341/354/354A/506 of I.P.C and Section 12 of POCSO Act, 2012).

State of West Bengal

vs

Jhantu Pramanik @ Kocha

----- Accused person

Charge u/S 341/354A of IPC and 12 of POCSOAct.

Mr. Kinkar GayenLd. Spl. P.P for the Prosecution

Mr. Subrata Kr. Maity Ld. Advocate for the Defence.

Date of delivery of Judgement: 14th day of March, 2023

J U D G E M E N T

The case of the Prosecution in short, is that, on 14-06-2017 at 21.15 hours the de facto complainant of this case P.W-2, lodged a written complaint before the Inspector in-charge of Tamluk P.S. alleging *inter-alia* that his daughter i.e. the victim girl (hereinafter referred to as the V.G), was 17 years old at the time of the incident. The accused Jhantu Pramanik, resident of same village irritated his daughter oftenly while she was going for tuition. The de facto complainant informed this matter to the family members of the accused but all in vain. On 14.06.2017 at about 7:30 p.m

his daughter returned from her private tuition from Kanktia Bazar, at that time the accused suddenly restrained her near a river dam and gave ill proposal and also caught her hand, he also suddenly put vermilion on the forehead of his daughter and fled away from that place. After hearing the hue and cry of his daughter, the local people rushed to the spot and recovered the victim girl from there. The de facto complainant also reached there after hearing about this incident and took her from that place.

Hence this case.

After receiving the written complaint, Tamluk P.S. Case No : 288 of 2017 dated: 14-06-17 u/S 341/354/354A/506 of Indian Penal Code, 1860 (hereinafter referred to as IPC) and 12 of Prohibition of Child from Sexual Offences (hereinafter referred to as POCSO) was registered.

After completion of investigation charge sheet was submitted u/sec. 341/354//354A/509 of IPC and 8 and 12 of POCSO Act.

It appears from the case record that on 15-06-2018 charge under section 341/354A of IPC and 12 of POCSO Act was framed against the accused Jhantu Pramanik @ Kocha. The substance of accusation was read over and explained to the accused to which he pleaded 'not guilty' and claimed to be tried.

In this case the Prosecution has examined as many as 7 (seven) witnesses to bring home the charge against the accused.

- 1 PW 1 is the victim girl;
- 2 PW 2 is the de facto complainant/father of the victim girl;
- 3 PW 3 – Bishnupriya Santra, a relative of the victim girl
- 4 PW 4 – Subhamoy Santra, relative of the victim girl
- 5 PW 5 is the mother of the victim girl
- 6 PW 6 Maitryee Santra, relative of the victim girl
- 7 PW 7 LSI Mousumi Sardar, the IO of this case

Apart from the oral evidences, prosecution has also relied upon some documents which have been marked Exhibits as follows:-

-: EXHIBITS :-

Sl. no.	EXHIBIT No.	DOCUMENTS
1.	Exhibit-1	Written statement of victim girl.
2.	Exhibit 2	Written complaint
3.	Exhibit 2/1	Endorsement with signature of SI Swapan Chhabri on written complaint.
4.	Exhibit 3	Statement with signature of PW 2
5.	Exhibit 4	Signature of PW 3 on seizure list dt. 17.06.2017
6.	Exhibit 4/1	Signature of PW 5 on seizure list dt. 17.06.2017
7.	Exhibit 4/2	Entire seizure list dt. 17.06.2017
8.	Exhibit 5	Signature of PW 5 on the carbon impression of zimmanama.
9.	Exhibit 5/1	Zimmanama dt. 17.06.2017
10.	Exhibit 6	Formal FIR
11.	Exhibit 7 & 7/1	Rough sketch map with index

After completion of the examination of the witnesses by the Ld. prosecution the accused was examined under section 313 of Cr.P.C. after giving statutory caution to him by this court. No evidence was adduced by the side of Defence.

Points for consideration

1. Whether the Prosecution has been able to prove the charge against the accused beyond all shorts of reasonable doubt ?
2. Has the accused committed any offence u/sec. 341/354A of IPC and Section 12 of POCSO Act?

: Decision with Reasons :

The cardinal principle of criminal jurisprudence is that the prosecution is to prove the case against the accused by producing reliable and convincing evidence in such a manner and to such an extent that there should not be any doubt regarding the complicity of the accused in committing the crime. Let us see whether the prosecution has been able to

prove the allegation against the accused beyond all the shadows of reasonable doubts.

In this case, charge was framed u/sec. 341/354A of IPC and section 12 of POCSO Act. The ingredients of 341 of IPC are as follows:

- 1 Accused obstructed a person
- 2 He did it voluntarily
- 3 It prevented such person from proceeding in certain direction in which he had the right to proceed.

The ingredients of section 354A of IPC are as follows:

1. A man committing any of the following acts:
 - a, physical contact and advances involving unwellcome and explicit sexual overtures or
 - b, a demand or request for sexual favours or
 - c, showing pornography against the will of a woman or
 - d, making sexually coloured remarks shall be guilty of the offence of sexual harassment
2. Any man who commits the offence specified in (a), (b), (c) of sub section 1 shall be punished with rigorous imprisonment for a term which may extend to three years or with fine or with both.
3. Any man who commits the offence specified in (d) of sub section 1 shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

The dictionary meaning of sexual harassment is as type of employment discrimination, includes sexual advances, request for sexual favours and other verbal or physical conduct of a sexual nature prohibited by law.

Section 12 of POCSO Act denotes the punishment of sexual harassment which is mentioned in section 11 of said Act.

According to section 11 of POCSO Act a person is said to commit sexual harassment upon a child when such person with sexual intent -

- i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

- ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- iii) shows any object to a child in any form or media for pornographic purposes; or
- iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- v) threatens to use in any form of media, real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- vi) entices a child for pornographic purposes or gives gratification therefor.

Now we will consider whether the ingredients of above mentioned sections are satisfied by the evidence of prosecution or not.

In this case it is stated that the victim girl is minor at the time of incident. In support of this contention Id. Spl. PP has referred the seizure list (Exbt. 4/2) from which it appears that IO of this case has seized original birth certificate of the victim girl and the same was returned to the mother of the victim girl by executing a zimmanama (Exbt. 5/1). The original birth certificate was not produced at the time of trial but it appears from the seizure list that the seized birth certificate of the victim girl shows the date of birth is 30.08.99. PW 2 / father of the victim girl and de facto complainant of this case has deposed that on the date of incident her daughter / victim girl was 17 years old. The mother of the victim girl as PW 3 also deposed to that effect that at the time of incident the victim girl was 17 years old. The cross-examination of these three witnesses does not contradict regarding the age of the victim girl. So, it is clear that at the time of incident the victim girl was minor. The victim girl as PW 1 deposed that the incident took place on 14.06.2017 at about 7:30 p.m at Janubasan and at that time she was returning from her private tuition. At that time the accused Jhantu Pramanik put vermilion on her head and abused her with filthy languages and fled away. Prior to the incident the accused proposed PW 1 but she refused. She identified the accused on dock.

At the time of cross-examination she has stated that her date of birth is 30.08.1999. She has further stated that Manas Santra was her private tutor at the time of incident. It is further stated that Janubasan is also known as Kanktia Bazar and the said place was very busy place.

PW 2 father of the victim girl / de facto complainant has stated that at the time of incident his daughter was 17 years and the written complaint was drafted as per his instruction and after going through the contents he put his signature on it (Exbt. 2). It is further deposed that the incident took place three years back from the date of deposition in the evening while his daughter was returning from Kanktia Market by a cycle. At that time the accused restrained her on her way and put vermilion on her forehead. Prior to this incident the accused used to disturb his daughter on several occasion. After the incident his daughter started to cry and local people gathered there. He was informed by local people through mobile phone. Then he went to the P.O and took his daughter to his home. He has stated that his daughter did not give any statement before Id. Judicial Magistrate and he gave his statement to that effect (Exbt. 3).

PW 3 is a relative of victim girl. She has stated that incident took place three years back in the evening at about 6:30 to 6:40 p.m while the victim girl was returning home from her private tuition at Kanktia Market by a cycle. At that time the accused Jhantu Pramanik restrained her on her way and put vermilion on her forehead. She came to know about the incident from a local boy. The birth certificate of the VG was seized from the mother of the VG and in her presence and she put her signature on it (Exbt. 4).

PW 4 is another relative of the victim girl, has no knowledge about the incident.

PW 5 the mother of the victim girl has deposed that the incident took place five years back from the date of deposition in the evening at about 7:30 p.m on a road near Kanktia Market. On that day and time her daughter was returning from her private tuition by a bicycle. On her way the accused Jhantu Pramanik restrained her and put some vermilion on her head. This witness came to know about Jhantu Pamanik from her husband.

So, it is not possible for her to identify the accused. She has further deposed that the original birth certificate of her daughter was seized by police in her presence and she put her signature on it (Exbt. 4/1 collectively). That document was returned to her after executing a zimmanama and she put her signature on zimmanama (Exbt. 5).

PW 6 is another relative of the victim girl, has deposed that the incident took place five years back from the date of deposition at about 7:00 p.m at Kanktia Market. On the relevant date and time the victim girl who was her sister in-law went for private tuition and she returned home crying at about 8:00 p.m. She saw vermilion on her forehead. On asking she replied that when the victim girl was returning from her private tuition by a bicycle then, Jhantu restrained her and put vermilion on her head and forehead. This witness identified the accused.

At the time of cross-examination she has stated that at the time of interrogation she told to police that on asking the victim replied to them that when she was returning from her private tuition by a cycle then one local boy namely Jhantu restrained her and put vermilion on her head and forehead.

It is pertinent to mention that the accused Jhantu Pramanik has admitted that he put vermilion on the forehead of the victim girl while he was examined u/sec. 313 of Cr.P.C.

At the time of argument ld. Defence Counsel has admitted that the accused has admitted that he put vermilion on the forehead of the victim girl. At the same time he has submitted that mere admission at the time of examination u/sec. 313 of Cr.P.C the Court cannot convict any accused without strong evidence.

Ld. Spl. PP has submitted that the victim girl and PW 2, 3 , 5 & 6 have stated that the accused put vermilion on the forehead of victim girl. He has further submitted that the victim girl was sexually harassed by the accused person.

On contrary, ld. Defence Counsel replied that prosecution has failed to prove its case against the accused. He has pointed out to the evidence of PW 1, 2, 3, 5 & 6 and submitted that the P.O was shifted in the evidence of the prosecution witnesses. He has further argued that the victim girl as PW

1 has deposed that incident took place at Janubasan. On the other hand PW 2 and PW 3 have deposed that the incident took place while the victim girl was returning from Kanktia Market. In this context this Court would like to say that at the time of cross-examination, the victim girl has stated that Janubasan is also known as Kanktia Bazar. So, the contention of the defence counsel has no leg to stand upon. According to Section 11 (i) of POCSO Act a person is said to commit sexual harassment upon a child when such person with sexual intent utters any word or makes any sound, or makes any gesture or exhibits any object or part of the body with the intention that such word or sound shall be heard, or such gesture or object of part of body shall be seen by the child. The sexual intent of the accused is vital to prove the offence u/sec. 11 of POCSO Act. In our case, PW 1 to PW 6, except PW 4 has stated that the accused put vermilion on the forehead of the victim girl. PW 6 saw vermilion on the forehead and head of that girl. It is a fact that PW 2 to PW 6 are not eye witnesses of the incident but they came to know from the victim girl that the accused put vermilion on the forehead of that girl which was admitted by the accused himself. Putting vermilion on the head of any girl without her consent specially in case of a minor girl is one type of sexual harassment as the accused has sexual intent in this type of activity.

According to Section 2(1)(d) child means any person below 18 years of age. In this case, it is proved by the prosecution that the victim girl was below 18 years of age at the time of incident. No contradictory evidence has come on the point of age. So, the prosecution has proved that the victim girl was a child at the time of incident according to section 2(1)(d) of POCSO Act. It further appears from the cross examination by the accused that the accused would not establish that he had no intention to harass the victim sexually.

Ld. Defence Counsel has argued that the place of occurrence was not properly identified by the prosecution witnesses. He has pointed out to the cross examination of PW 1 and PW 7.

He has further stated that PW 2, 3, 4, 5 & 6 were not eye witnesses of the incident.

He has further pointed out to cross-examination of IO (PW 7) where he has admitted that he has mentioned the date of incident in charge sheet as 16.06.2017.

It is fact that PW 2, PW 3, PW 5 and PW 6 have heard about the incident but it is also fact that no one was present at the time of incident, except the victim girl and the accused. PW 6 personally saw vermilion on the forehead of the victim girl. So, we can rely upon the evidence of the prosecution witnesses.

Vermilion is a sign of marriage. While the accused put vermilion on the forehead of a minor girl then it should be sexual harassment and the accused of this case has admitted his activity at the time of examination u/sec. 313 of Cr.P.C. From the evidence of prosecution, it is well established that the accused wrongfully restrained the victim girl and sexually harassed her according to Section 11 of POCSO Act but prosecution has failed to prove the ingredients of section 354 A of Indian Penal Code.

The mistake of IO cannot help the defence while the ingredients of the offence are established by the evidence of prosecution.

The POCSO Act is a landmark legislation for protection of child rights and to prevent the sexual abuse and exploitation of children. It is duty of the Court to punish the offender. In our case prosecution has proved the guilt of the accused.

Having considered the above discussion, this court is of the view that prosecution has proved this case against the accused beyond all reasonable doubt.

Hence , it is

ordered

that the accused namely, Jhantu Pramanik @ Kocha is found guilty of the charge punishable under sections 341 of IPC and section 12 of POCSO Act. And accordingly he is convicted under section 235(2) of Cr.P.C.

He is taken into custody after cancellation of his respective bail bonds.

To 15.03.2023 for hearing of the convict on the point of sentence.

The convict Jhantu Pramanik @ Kocha is sent to Tamluk Sub Correctional Home for his mental reflection with a direction to the Superintendent of Tamluk Sub Correctional Home to produce the convict before this Court on 15.03.2023 at 10:00 a.m.

Dic. & Corr. by me

sd/-

Addl.Dist. & Sessions Judge
2nd Court,Tamluk,Purba Medinipur. 2nd Court,Tamluk,Purba Medinipur.
JO Code WB00755

sd/-

Addl.Dist. & Sessions Judge
2nd Court,Tamluk,Purba Medinipur. 2nd Court,Tamluk,Purba Medinipur.
JO Code WB00755

Order dt. 15.03.2023

The convict Jhantu Pramanik @ Kocha is produced from JC.

Heard the convict as well as Ld. Spl P.P and Ld. Defence Counsel on the point of sentence.

Convict Jhantu Pramanik @ Kocha has stated he thought the victim as his sister. He has further submitted that he has his wife, one kid and his parents who are dependent upon him. He has further submitted that he and the victim girl married two separate persons.

Ld. Defence Counsel has prayed for keeping the convict under Probation Officer as offence is minor.

Ld. Spl. PP has submitted that previously we did not give any importance to sexual harassment such as, putting vermilion on the forehead of a minor but after enactment of POSCO Act this type of activity cannot be looked over. He has prayed for highest sentence for the convict.

Considering the submission of the convict as well as Ld. Defence Counsel this court is of the view that whenever a conviction is entered in a criminal trial, a sentence must follow as a matter of law. In other words when the court finds an accused guilty, it is bound duty of the court to pass an appropriate sentence.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society cannot long endure under serious threat.

It is duty of every court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed.

The measure of punishment in a case must depend upon the society of the crime, the conduct of the criminal and defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the court response to the society's cry for justice against criminals. Justice demand that Court should impose punishment befitting the crime so that the court's reflected public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the punishment.

In our case the accused is convicted for committing offence u/sec. 341 of IPC and 12 of POCSO Act.

The sentence of the offence committing u/sec. 341 of IPC is simple imprisonment for a term which may extend to 1 month or with fine which may extend to Rs. 500/- or with both.

The sentence of the offence committing u/sec. 12 of POCSO Act is imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine.

Keeping in view the facts and circumstances and submission of Id. Defence Counsel and Id. Spl. PP this Court opined that the activity of the accused hurt the minor girl, so we cannot invoke the section 360 of Cr.P.C or Probation of Offender's Act in this regard.

Simple imprisonment of one month for the offence punishable u/sec. 341 IPC and rigorous imprisonment of one year and fine of Rs.10,000/- in default simple imprisonment of six month would meet the ends of justice.

Hence, it is

Ordered

that the convict Jhantu Pramanik @ Kocha is hereby sentenced to suffer simple imprisonment of one month for the offence punishable u/sec. 341 of IPC.

He is further sentenced to suffer rigorous imprisonment of one year and fine of Rs. 10,000/- and in default simple imprisonment of one month for committing offence punishable u/sec. 12 of POCSO Act.

All the sentences will run concurrently.

The period of detention in custody during inquiry, investigation and trial by the convict shall be set off by way of adjustment against the sentence u/sec. 428 of Cr.P.C.

Issue Jail Warrant accordingly.

Let a copy of this judgement be supplied to the convict at once at free of costs.

Let copy of this judgement be sent to the District Magistrate, Purba Medinipur as per provision of section 365 of Cr.P.C for record and also to Secretary, DLSA, Purba Medinipur for information.

Dic. & Corr. by me

sd/-

Addl. Dist. & Sessions Judge
2nd Court, Tamluk, Purba Medinipur.
JO Code WB00755

sd/-

Addl. Dist. & Sessions Judge
2nd Court, Tamluk, Purba Medinipur.

Later,

After pronouncement of sentence the convict Jhantu Pramanik @ Kocha has filed an application praying for bail as he wants to prefer appeal before Hon'ble High Court, Calcutta.

Heard Ld. Advocate for the convict as well as Spl P.P.

Ld. Spl P.P has not raised any objection.

According to Section 389(3)(i) of Cr.P.C where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the court shall where such person being on bail, is sentenced to imprisonment for a term not exceeding three years, order that the convicted person be released on bail, for such period as will afford sufficient time to present the appeal and obtain the order's of the Appellate Court under sub-section(1) and the sentence of imprisonment shall so long as he is so released on bail, be deemed to be suspended.

In this case the convict intends to prefer an appeal against the judgment and order of this court before Hon'ble High Court, Calcutta. So, in view of the above mentioned provision this court is inclined to allow it.

Accordingly the prayer for bail is allowed.

The convict Jhantu Pramanik @ Kocha may find a bail of Rs. 2500/- with one regd. surety subject to satisfaction of Ld. CJM, Purba Medinipur till 25.04.23 id. to J.C.

He is further directed to obtain an order from Hon'ble Court by 25.04.23.

To-date(25.04.23) for appearance and order of Hon'ble Court.

Copy of order be sent to the Ld. CJM, Purba Medinipur for his compliance.

D.C by me,

sd/-

ASJ, 2nd Court, Tamluk

sd/-

ASJ, 2nd Court, Tamluk

Memo No...../ Dt. 15.03.2023

Copy be forwarded to Ld. CJM, Tamluk, Purba Medinipur.

Sd/-

ASJ, 2nd Court, Tamluk