

**IN THE COURT OF
SPECIAL JUDGE,
PROTECTION OF CHILDREN FROM
SEXUAL OFFENCE ACT (POCSO)
MIZORAM, AIZAWL**

BEFORE

**Mrs. Lucy Lalrinthari
Special Judge, POCSO Act
Aizawl Judicial District, Aizawl**

**SC. No.2 of 2015
Criminal Trial No.54/2015
u/s10 of POCSO Act,2012
Ref: VaivakawnPS C/No.293/14 dt.23-11-2014**

State of Mizoram

Vrs

LalbiakhlunaS/o Darliankunga (L) of ZuangtuiGodownVeng - Accused

PRESENT

For the Prosecution : Mrs.K.Lalremruati,Ld.Spl.P.P.

For the Accused : Mr.Lalhriatpuia,Ld.Counsel.

Date of Hearing : 7.4.2016

Date of Judgment : 22.4.2016

JUDGMENT & ORDER

1. The prosecution story of the case in brief is that on 23.11.2014 a written FIR was submitted to O/C VVK PS by Zodingliani W/o M.Matha(L) of Zonuam Complex road stating that one person called Biaka who lived down stair had sexually assaulted her granddaughter

X (8yrs) for the past two months by forcing her to touch his private part. This had happened about 4 times in the past. And on the morning of 22.11.14, he forced her to touch his private part again and this was known by the complainant on 23.11.14 and she requested to take necessary action. Hence, O/C VVK PS registered C/No.293 dt.23.11.14 u/s 354 A(2) IPC R/w 8 of POCSO Act and the case is duly investigated into.

2. During the course of investigation, the complainant Zodingliani was carefully examined. She stated that her granddaughter X (8yrs) D/o Lalramnghaki who stayed with them had been sexually assaulted by one person known as 'Biaka' who stayed as a guest of their down stair neighbor for the past two months by forcing her to touch his private parts. This had happened about four (4) times during the past two months. And on the morning of 22.11.14, he forced her to touch his private part again and the incident came to her notice on 23.11.14. The victim X (8 yrs) d/o Lalramnghaki of Zonuam was carefully examined. She stated that "Apu" (Biaka) had asked her and her younger brother several times to give him body massage and when they massage him, he took her hand and let her touch his private part and when she refused, he forcibly took her hand and make her to touch his private part. This had happened about four times during the past two months. The accused Lalbiakhluna (47) S/o Darliankunga of Zuangtui P/A Zonuam was arrested on 23.11.14 and he was carefully interrogated. He admitted his commission of the offence before police stating that he had forced victim X (8 yrs) to touch his private part while giving him a body massage. Birth Certificate of victim X was seized in presence of reliable witnesses to confirm victim's age. Judicial statement of victim was recorded, which corroborated with her statement recorded during the investigation.

3. The case was registered under the charge section of 354 A(2) IPC R/w 8 of POCSO Act. However, investigation reveals that the victim was proved to be 8 yrs i.e, below 12 yrs for which 8 of POCSO Act may kindly be altered to 10 of POCSO Act.

4. From the above facts and circumstances, a prima facie case u/s 354 A(2) IPC R/w 10 of POCSO Act is found well established against the accused Lalbiaknunga (47) S/o Darliankunga (L) of Zuangtui P/A Zonuam. Accordingly case I/O Submitted charge-sheet against the accused.

5. In order to hide the identity of the victim her name is not mentioned by referred to as "X".

6. As per section 207/208 of Cr.P.C, all the police reports and its connected papers were furnished to the accused. The accused expressed his inability to engaged lawyer at his own expense. Hence, Advocate Lalhriatpuia is appointed to defend the accused under section 304 of Cr.p.C at the state's expense.

7. Ld. Spl.P.Mrs.K.Lalremruati opened her case and stated that the prosecution has the evidence to prove the guilt of the accused u/s 10 of POCSO Act 2012. The Ld. counsel for

the accused had not objected. Hence on hearing the submission of both parties and on perusal of the case record, this court is satisfied that there is sufficient evidence to proceed further with the instant case. Hence charged u/s 10 of POCSO Act 2012 is framed, read over and explained to the accused in his own language to which the accused pleaded not guilty and claimed for trial

8. In the instance case the accused is charged u/s 10 of POCSO Act 2012. Section 10 of POCSO act is, "Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall be liable to fine"

9. The aggravated sexual assault is described under section 9 of the same Act. Section 9 (m) of POCSO Act says, "whoever commits sexual assault on a child below twelve years, or...". As the victim is only 8 years section 9 and 10 of the same act is found appropriate in the instant case. Hence, if the accused is unable to prove his innocence, he would be found guilty.

10. In order to bring home the charge against the accused the prosecution examined the following PWs before the court.

11. PW No.1 Zodingliani identified the accused and stated that the accused used to frequently visit the house of her elder brother who is living below their house. The victim is her granddaughter and residing with her along with her mother. On 23.10.2014 she was informed by the mother of the victim that the victim had informed her cousin who had in turn informed her mother about the incident. On enquiry from the victim it was learnt that the accused had on several occasions forced the victim to touch and fondle his private parts. The latest incident took place on the day before that is 22.10.2014 morning she enquired from the victim why she did not report the matter earlier. The victim replied that she was afraid of the accused. Later on same day she accosted the accused in the house of her brother where he was staying as a guest for over a month. The accused vehemently denied having committed any offence against the victim. Therefore, they reported the matter to police and file FIR before Vaivakawn PS. Exbt. P-1 is the FIR submitted by her. Exbt. P-1 A is her signature on the FIR.

On Cross-examination PW No.1 stated that she did not have any ill feeling towards the accused prior to the incidents. The mother also is not in bad relationship with the accused. The accused is allegedly selling land as middle man. The accused does not pay any rent to her brother. However, he sometimes buys vegetables and meat for the kitchen. The accused is also in good terms with her brother.

12. PW No.2 X (Victim) had stated that she know the accused. He used to live downstairs to where they are residing. He was a guest of her grandfather. The accused used to ask her and her younger brother to massage his body on payment of some money. He would give her Rs.10/- for the massage. While massaging his body he would grab hold of her hands and forcibly make her touch his private parts. When she resisted he would forcibly continue to grab her hands and make her touch his private parts. She did not remember exactly how many occasions he did this to her. While this was going on her younger brother would massage his lower part of body that is legs etc. after the first occasion she refused to massage his body. However, he would forcibly drag her inside the house and make her touch his private part. During this time no other grown up was present in the house. Her grandfather who was in the house was in deep sleep. He did not touch her in her private part. On the last occasion her cousin sister who was visiting them was also present and the accused also tried to make her touch his private part. Her cousin sister then informed her mother who in turn inform her mother. Her mother then informed her grandmother.

On Cross-examination PW No.2 had stated that she did not make any noise while the incident was going on since he forcibly grabbed her and made her younger brother cry.

Her mother and father are already divorced for a long time. She is living with her mother. She did not know where her father is living at present.

Her grandmother told her to narrate the incident as it happened. She was not tutored by anybody.

13. PW No.3 Biakthansanga had stated that he know the accused present in the court this day. Accused used to stay in the house of his uncle who are residing below their house. On 24.11.2014 he was in Church service when his mother summoned him over telephone. He return home immediately and was informed by his mother that the accused was in the habit of sexually assaulting the victim by making her touch his private part. The accused was also present and he was quite angry. However, it was decided that the matter should be reported immediately to Police. Accordingly, he accompanied the victim to Zonuam Outpost where they were referred to approach Vaivakawn PS. They proceeded to Vaivakawn PS. They were informed by the police to produce the Birth Certificate of the victim. On the next day he along with victim and his mother produced the original Birth Certificate of the victim before the Vaivakawn PS. The Xerox copy of the birth certificate was seized by the Vaivakawn PS and the original was returned to them. Seizure memo was prepared and he appended his signature on the seizure memo. Exbt. P-2 is the seizure memo. Exbt. P-2 A is his signature.

On Cross-examination PW No.3 had stated that he came to know of the incident through his mother.

The original birth certificate was taken by his mother. He believed the birth certificate belong to the victim since it was carried by his mother. He did not closely peruse the birth certificate. There was no misunderstanding between the accused and the family of his uncle.

14. PW No.5 Jessica Lalawmpui case I/O identified the accused and stated that during the year 2014 she was posted at CAW Cell, Aizawl. On 23.11.2014 an FIR was received from Zodingliani W/o M. Matha (L) of Zonuam, Complex road saying the accused had sexually assaulted her granddaughter aged about 8 yrs old for the past two months by forcing her to touch his private part. She further stated in the FIR that the accused sexually assaulted the victim for about four times and on the morning of 22.11.2014 he again forced her to touch his private part and they came to know about the incident and on 23.11.2014 they make a complaint to the PS. Hence, Vaivakawn PS C.No 293/14 dt. 23.11.2014 u/s 354A(2) IPC r/w 8 of POCSO Act was registered against the accused. O/C Vaivakawn PS endorsed the case to her for investigation. During the course of investigation, she visited the PO and examined the victim and the complainant and recorded their statement. On the same day she arrested the accused and thoroughly interrogated him and the accused admitted his guilt before her. She also seized the Birth Certificate of the victim in the presence of the witnesses. On her investigation she found prima facie case against the accused u/s 10 of POCSO Act and she altered the charging sec. 8 to sec. 10 of POCSO Act and she submitted the charge sheet for the court. Exbt. P-2 is the seizure memo and Exbt. P-2-A is her signature. Exbt. P-3 is the charge sheet submitted by her and Exbt. P-3-A is her signature. Exbt. M-1 is the seized Birth Certificate.

On Cross-examination PW No.5 had stated that it is a fact that the statement of the victim and the complainant were recorded in the Vaivakawn PS.

It is a fact that she was wearing her uniform when she recorded the statement of the victim and the complainant.

It is a fact that the statement of the accused was recorded in the Vaivakawn PS by her and she is wearing her uniform when she recorded the statement of the accused.

It is a fact that she seized the Birth Certificate of the victim from the grandmother of the victim and she also perused the said Birth Certificate at the time when she seized the same.

It is a fact that the witnesses also put their signatures in her presence.

On re-examination PW No.5 had stated that she examined and recorded the statement of the victim at the PS after she asked the victim whether she want to take her statement at her residence or at the PS and the victim agreed to examine her at the PS.

14. After the prosecution evidence is closed, the accused is examined u/s 313 of Cr.P.C. as follows:-

Examination of Accused u/s 313 Cr.P.C:

Q.1. It is in the evidence that on 22.11.2014 morning time, you forced victim girl 8 yrs old and her younger brother to touched and massage your penis. What do you say?

Ans :No, I did not do it.

Q.2. It is in evidence that you had for several occasions forced her to touch your penis even to let ejaculation. What do you say?

Ans :No, I did not do it.

Q.3. It is in evidence you are addicted to liquor.

Ans :I did not drink daily - about two times in a week.

Q.4. Do you have any other thing to say before the court?

Ans :Not in particular.

Q.5. Do you want to adduce defence evidence?

Ans :No.

15. As the accused did not want to adduce defence evidence, both the prosecution and the Ld. Defense counsel are heard on the point of argument. The Ld. Spl.P.P. submitted that the victim is only 8 yrs old, and she is telling the truth, the cross-examination did not shake her evidence. The victim clearly stated that the accused forced him to massage his body and forcibly grabbed her hand and let her massage his penis not less than four times. In the course of which sometimes a white discharge comes out of her penis. Though the accused denied vehemently, the accused did not denied that he let her massage his body. There is no reason why the girl of 8 years would make the story of touching the penis of the accused. The victim afraid to tell her family, but tell her friend, who in turn tell her mother, the mother in turn tell the incident to the grandmother of victim. Hence, the prosecution is able to prove the guilt of the accused. Not only that in a case under POCSO Act u/s 29, the accused has to prove his innocence. In the instant case the accused could not prove his innocence. Hence she prayed for conviction of the accused under the charged section.

16. The Ld. Counsel, on the other hand had nothing to submit in defence, but prayed for leniency as the punishment under POCSO Act is serious.

DECISIONS AND REASONS THEREOF

17. In the instant case, we have the evidence of victim 8 years old, who stated that the accused is living in the downstairs of their residence with her grandfather. She and her younger brother used to visit downstairs. The accused asked her and her younger brother to massage (malis) his body. At that time, her younger brother massages the leg portion, where the accused take her hand and let her massage her penis. Even if she does not want to touch it, the accused would grab her hand and forcibly would let her hand massage at his penis. It would not be less than four times. The cross-examination would not alter her evidence. The accused also did not deny the presence of the victim and her younger brother with her, but totally denied he let her touch at her penis. However, the court always opined that a minor children below 10 years would normally not tell a lie regarding sexual activities unless it is true, because the sexual desire does not arouse in a child less than 10 years. The natural inborn sexual behavior does not arose until the child her attained puberty. In the instant case, also, there is no reason why the victim girl would tell a lie. Her testimony inspires confidence. There is no misunderstanding between the family and the accused. The accused is a good friend of her grandfather and therefore stayed with the victim's grandfather as a Guest more than a month in the downstairs of the victim's residence. As the victim's father and mother are separated, victim's mother lived with her parent's house taking with her victim and her younger brother. Taking advantage of the minor children for satisfying his sexual urge, the accused has committed offence against the Protection of Children from Sexual Offences Act 2012. From all the evidences adduced I firmly believed that the victim minor spoke the truth and the accused actually used the victim to satisfy his sexual urge. There is no other alternative opinion that can be arrived at in the instant case.

I am therefore, convinced that the prosecution is able to prove the guilt of the accused u/s 10 of POCSO Act 2012. When any person committed sexual assault under 12 years of age he is liable of punishment u/s 10 of POCSO Act. The accused having been proved of guilty of offence u/s 10 of the Act, I convicted him accordingly.

18. On the question of sentence, the accused and the prosecution are heard as per section 235(2) of Cr.P.C. The accused prayed for leniency as it is his first commission of offence. On the other hand the Ld. Spl. P.P. prayed for maximum punishment as the prosecution is able to prove the guilt of the accused.

19. After hearing both accused and the prosecution, I am convinced that maximum punishment is not called for. Hence, in my considered opinion minimum sentence of 5 years be given to the accused. I sentence him accordingly.
20. Detention period as UTP shall be set off from total period of sentence.
21. Seized article of Birth Certificate be return to the rightful owner, the victim.
22. Give copy of this order to all concern.
23. Given under my hand and seal of this court today the 22nd of April 2016.

Sd/-LUCY LALRINTHARI

Special Judge, POCSO Act
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No

Dated Aizawl the 22nd April 2016.

Copy to:-

- 1) Lalbiakhluna C/o Mr.Lalhriatpuia, Advocate.
- 2) Mrs.K.Lalremruati, Ld.Spl.P.P, POCSO Act.
- 3) DSP Prosecution.
- 4) O/C Vaivakawn P/S.
- 5) Special Superintendent, Central Jail Aizawl.
- 6) In charge, Judicial Section.
- 7) Case record.
- 8) Guard file.

PESHKAR

APPENDIX

A. PROSECUTION EXHIBIT

- Exbt. P-1 - FIR
- Exbt. P-1 A - Signature of PW No.1
- Exbt. P-2 –Seizure memo
- Exbt. P-2 A - Signature of PW No.3
- Exbt. P-3–Charge-sheet
- Exbt. P-3 A - Signature of PW No.5
- Exbt. M-1–Seized Birth Certificate

DEFENCE EXHIBIT- None

- B. Exhibit produced by witnesses - None
- C. Court Exhibit - None
- D. Prosecution witnesses :
 - PW No.1 is Zodingliani.
 - PW No.2 is Victim (XXX).
 - PW No.3 is Biakthansanga.
 - PW No.4 is Jessica Lalawmpuii.
- E. DEFENCE WITNESSES - None
- F. COURT WITNESSES - None

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