CAUSE TITLE POCSO Case No. 68/16

Informant: 'Y'.

Accused: (1) Sri Sukra Urang,

S/o- Sri Soneswar Urang.

(2) Sri Amritlal Urang,

S/o- Late Somra Kanda.

Both are residents of:

28 Line, Ouphlia Tea Estate,

PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Mr. S Dowarah, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 68/16 G.R. Case No. 2601/16

> > State of Assam

-Vs-

Sri Sukra Urang and another

Charges: Under Sections 448/354-A/354-B IPC, read with Section 8 POCSO Act.

Date of evidence on : 03-08-17 and 14-12-17.

Date of argument : 04-11-19. Date of Judgment : 18-11-19.

JUDGMENT

- 1) The prosecution case in a narrow compass is that on 11-09-16, at about 7:00 pm, Sri Sukra Urang and Sri Amritlal Urang (hereinafter the accused persons), committed rape on the fifteen year old minor victim 'X' when she was alone at home. An ejahar regarding this incident was lodged by the victim's father 'Y' and Bamunbari OP GD Entry No. 236 dtd. 12-09-16 was registered and the FIR was forwarded to the Tingkhong Police Station and Tingkhong PS Case No. 111/16 under Sections 448/354-A/34 of the Indian Penal Code (IPC for short), read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short) was registered and SI Learnis Pegu was endorsed with the investigation.
- 2) The investigating officer (IO for short) embarked upon the investigation. He recorded the statements of the victim and the witnesses. He went to the place of occurrence and prepared the Sketch-Map and recorded the statements of the witnesses. He forwarded the victim to the Magistrate who

recorded her statement under Section 164 of the Code of Criminal Procedure (CrPC for short). He also forwarded the victim for medical examination. On finding sufficient materials against the accused, the IO submitted Charge-Sheet against them under Sections 448/354-A/34 IPC, read with Section 4 POCSO Act. As Accused Sukra Urang could not be apprehended by the IO, he was shown as absconder by the IO.

3) On appearance of the accused persons, copies were furnished and after hearing both the sides, a formal charge under Sections 448/354-B IPC, read with Section 8 POCSO Act was framed and explained to the accused Sri Amritlal Urang and a formal charge under Sections 448/354-A IPC, read with Section 8 POCSO Act was framed and explained to the accused Sri Sukra Urang. Both the accused persons abjured their guilt and claimed to be tried. To substantiate the stance, the prosecution adduced the evidence of six witnesses including the IO and exhibited various documents, whereas the accused persons cross-examined the victim and the IO. The defence did not cross-examine the other witnesses. On the inculpatory circumstances arising against them, the tone and tenor of the answers of the accused persons under Section 313(1)(b) CrPC depicts a plea of total denial.

Submissions:

4) The learned Public Prosecutor Smt. Runumi Devi laid stress through her argument that the accused persons deserve punishment. On the contrary, the learned defence counsel laid stress in his argument that this case is replete with contradictions. The victim's evidence does not inspire confidence.

Points for determination:

5) On the backdrop of the rival contentions, urged at bar, following points are apposite for proper adjudication of this case.

- i. Whether on 11-09-16, at about 7:00 pm, both the accused persons committed house trespass by entering into the house of the informant?
- ii. Whether at the same time and place, both the accused persons used criminal force upon the victim 'X'?
- iii. Whether at the same time and place, both the accused persons committed sexual assault on the victim 'X'?

Decisions thereon and the reasons for the decision:

6) The victim 'X' testified as PW-1 that the accused persons are her neighbours. She used to address them as 'Kokai'. The alleged incident took place about a year ago. On that evening, at about 7:00 pm, she was alone at home. She was helping her elder sister's son with his studies at that time. At that time, both the accused persons entered into their house and asked her who else was present at home. As she was terrified of the accused persons, she lied that her mother was inside the house. Then Amrital Urang asked her for chillies to have alchohol along with the challies. She offered chairs to the accused persons and she went inside the kitchen to prepare dal. As she was about to add salt in the dal, Amritlal Urang came and held her hand and gagged her. He ripped off her sporting, but somehow, she managed to escape by pushing him away. Immediately, she rushed towards her nephew and Sukra Urang who was sitting nearby, held her by her hand. She tried to run away from the place, but Sukra Urang held on to her. She somehow managed to escape and she pushed away Sukra Urang and left her nephew and fled. She went to her neighbour Shankar Urang's house and informed his wife about the incident. She stayed in Shankar Urang's house for a while and then her parents and her elder brother arrived and she informed them about the incident. Her mother was enraged and brought the accused Amritlal Urang and the public assaulted and so Amritlal Urang fled. Sukra was also assaulted by the public. On the following morning, she went to the police station along with her parents, aunt (khuri) and the members of the Mahila Samiti. Her father lodged an ejahar with the police regarding the incident. The police recorded her statement and forwarded her to the hospital for medical examination on the next day. She was also forwarded to the Magistrate who recorded her statement Ext. 1 wherein Ext. 1(1) upto Ext. 1(3) are her signatures. Her father expired about four months ago.

- 7) In her cross-examination, she testified that the accused visits their house and there is a liquor shop near their house, and the accused persons bought alcohol from the liquor shop and came to their house to borrow chilies to have the same along with the alcohol. The accused persons called her father from outside and then they entered into their house. The remaining part of her cross-examination is not noteworthy.
- 8) The P.W.2 say-'Y' testified that the victim is her daughter who is around 15 years of age. The incident occurred about 4 / 5 months ago. On the day of the incident, she went out of her house, for some work and to bring cattle and such other work. Her husband went out to attend Puja near the house and the victim 'X' was alone at home. When she returned home, she called her daughter and her grandson came out of the house and informed her that her daughter 'X' was not at home. She went to the neighbour's house where her daughter 'X' went. She asked her daughter about the incident. Her daughter was in tears and many people were also assembled there. 'X' tearfully narrated the incident that Amit Orang and Sukra Orang came to their house during their absence. On the same night, the Police also came to their

- house. The public assaulted Amit Orang and Sukra Orang and so Sukra Orang was taken to the Garden Hospital. On the following day, she along with her daughter went to Bamunbari Outpost, accompanied by her husband. The Police recorded her statement.
- 9) Rajesh Orang testified as P.W.3 that the victim is a distant relative. The alleged incident occurred on 11.09.16. At that time, he was a secretary of ATTSA. On the night of the incident, the members of ATTSA called him over phone and informed him about an incident of assault in Line No.28. He then went to the place of occurrence and noticed a gathering. The VDP members arrived and informed about the incident at Bamunbari Outpost. The accused Sukra Orang was assaulted by the public and then they took Sukra to the Garden Hospital for treatment. On the mid way, they met the Police while taking Sukra to the Garden Hospital. The Police took them to the place of occurrence. The victim's father lodged an ejahar regarding the incident. He did not know why the victim's father lodged the ejahar against the accused. The accused Sukra is related to him.
- 10) Prakash Kanda testified as P.W.4 that both the accused persons are known to him. The victim is also known to him. The alleged incident occurred about a year ago. The line boys informed him about trouble in Line No.28 and asked him to inform about it to the Police. Accordingly, he informed the matter to the Police and arrived at the spot. He heard that both the accused persons went to the victim's house to borrow chilies to have it with alcohol and then the public assaulted both the accused persons. The cross-examination of this witness is also declined.
- 11) Motital Kanda testified as P.W.5 that the accused persons and the victim are known to him. The victim is a distant relative. About 3 / 4 months ago, while

he was taking rest, he heard a commotion and he went out of his house and noticed that the public were attacking the accused persons. The AATSA was informed and the VDP members informed the matter to the Police. He took the injured Sukra to the hospital on a 'thela' (push cart). Then, he met the Police on the way and he asked the others to take Sukra to the hospital and he accompanied the Police to the place of occurrence. Later, he heard from the victim that the accused persons asked for chillies to have it with alcohol and entered into their house.

12) S.I. Lernish Pegu testified as P.W.6 that on 12.09.16, he was posted at Bamunbari Outpost as In-charge. On the intervening night, he received information over phone about a sexual assault, at about 12.15 a.m., mid night and registered G.D Entry No. 227 dated 12.09.16. He immediately went to the place of occurrence along with staff and he found 2 boys being tied and held captive by the villagers who also assaulted the 2 boys. He recorded the statements of the witnesses at the place of occurrence. He recorded the statements of the victim. The accused persons were forwarded to the hospital and one accused was in a serious condition and he was shifted to the AMCH at Dibrugarh. After first aid, Amitlal Orang was released from Moran dispensary and he took him into custody. Thereafter, the FIR was lodged on the next day by the victim's father and a Bamunbari O.P G.D Entry No.236 dated 12.09.16 was registered and the FIR was forwarded to the Tingkhong Police Station which was registered as Tingkhong P.S Case No. 111/16, under Section 448/354(A)/34 IPC read with Section 8 of the POCSO Act and he was entrusted with the investigation. Exhibit 2 is the FIR and Exhibit 2(1) is the signature of the O.C with endorsement. He arrested the accused and forwarded him to jail. He prepared the sketch map of the place of occurrence,

Exhibit 3 wherein Exhibit 3(1) is his signature. He forwarded the victim for medical examination and also to the Court for recording her statement under Section 164 Cr.P.C. The accused Sukra Orang was released from the AMCH and he could not be traced out. Thereafter, he collected the Medico Legal Report of the victim and after completion of the investigation, he laid charge-sheet against the accused Amitlal Orang and absconding the accused Sukra Orang, under Section 448/354 (A)/34 IPC read with Section 8 of the POCSO Act. Exhibit 4 is the charge-sheet wherein Exhibit 4(1) is his signature.

Analysis of the Evidence:

- 13) It is clear from the victim's evidence that she was alone at home with her nephew and the accused persons entered into her house and they queried about anybody else's presence in their house. She was terrified and she lied that her mother was inside the house. Then, Amitlal Orang asked for chilies to have it with alcohol. When she went inside to prepare food, Amitlal came inside and held her hand and gagged and ripped off her sporting. The victim's mother P.W.2 is silent about such an overt act by the accused Amitlal Orang. The victim's mother also did not implicate that Sukra Orang also restrained the victim by holding her hand when she tried to escape from the clutches of Amit Orang. The silence of the victim's mother casts a shadow of doubt over the veracity of the victim's evidence.
- 14) The evidence of P.W.1 further proceeds that she has somehow managed to push away Sukra and Amit Orang and escaped. Then, she went to Shankar Orang's house and informed his wife about the incident. The investigating agency and prosecution failed to produce Shankar's wife as a witness which is a discrepancy in the evidence. The victim's elder brother was also not produced as a witness. The victim testified that she met her parents and her

elder brother in Shankar's house and informed them about the incident.

There is not a hint in her mother's evidence that she met her daughter in Shankar's house.

- 15) It is true that the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 clearly depicts the public assaulted Amit Orang and Sukra Orang and Sukra Orang sustained grievous injuries and he underwent treatment at AMCH hospital also. The reason why the public assaulted the accused persons Amit Orang and Sukra Orang is also shrouded by mystery. The witnesses P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 are silent about the reason why the public assaulted the accused persons. However, the evidence of P.W.1 depicts that the accused persons were assaulted because they misbehaved with the victim. The informant passed away and his evidence could not be recorded.
- 16) The testimony of the victim also deviates from her statement under Section 164 Cr.P.C because in her statement under Section 164 Cr.P.C, the victim stated that on the evening of the incident Amitlal came to their house and asked if anybody else were present in the house and then she went inside the kitchen, he followed her and gagged her and ripped off her entire dress. She then somehow managed to escape. Unlike her evidence Sukra Orang was nowhere in the scene. But further in her statement she stated that when she went to take her nephew with her, then she saw Sukra Orang who held her by her neck. Due to differences of the statement under Section 164 Cr.P.C and her evidence, I believe that both the accused persons deserves a benefit of doubt. Moreover, apart from the victim, not a single witness testified that the accused person misbehaved with the victim. This also extends a benefit of doubt to both the accused persons.
- 17) In view of my foregoing discussions, it is thereby held that the victim's

evidence does not inspire confidence. It is also held that the prosecution

failed to prove beyond a reasonable doubt that the accused persons

committed sexual assault on the victim or outraged her modesty by tearing

her dress. The accused persons are also not held guilty under Section 448

IPC because criminal trespass could not be proved beyond a reasonable

doubt. The victim testified in her cross-examination that the accused persons

used to visit them occasionally. So, no criminal trespass can be ascribed. It is

thereby held that the prosecution failed to prove beyond a reasonable doubt

that the accused persons committed house trespass.

18) In view of my foregoing discussions, the accused Amit Orang and Sukra

Orang are acquitted from the charges under Section 448/354 (A)/ 354(B) IPC

and also under Section 8 of the POCSO Act, on benefit of doubt and set at

liberty forthwith.

19) It appears that the victim does not deserve compensation, so this case is not

recommended for compensation.

Judgment is signed, sealed and delivered in the open Court on the 18th day of

November, 2019.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

> > Contd.

APPENDIX POCSO Case No. 68/16

List of witnesses for prosecution:

- 1. PW-1 Victim 'X';
- 2. PW-2 Mother of the victim;
- 3. PW-3 Sri Rajesh Urang;
- 4. PW-4 Sri Prakash Kanda;
- 5. PW-5 Sri Motilal Kanda;
- 6. PW-6 SI Learnis Pegu.

List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim 'X' recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Sketch-Map; and
- 4. Ext. 4 Charge-Sheet.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil.

List of exhibits for defence: Nil.

Sessions Judge, Dibrugarh