



**IN THE COURT OF SPECIAL JUDGE, BAKSA ::::::::::::::: AT MUSHALPUR**

Present : Shri C. Das

Judge, Special Court  
Baksa, Muzalpur

**JUDGMENT IN SPECAIL POCSO CASE NO.49/2018(OLD NO.4/16)**

u/s 4 of POCSO Act.

State

-versus-

Sri Anil Mandal

.... Accused

Appearance :

For the State : Mr. R. Chetry, learned Public Prosecutor, Baksa

For the accused : Mr. M. Rahman, learned Advocate

Date of evidence recorded : 9.8.18, 12.11.18, 5.3.19, 9.5.19, 2.7.19

Date of argument : 4.11.19

Date of judgment : 18.11.19

**JUDGMENT**

1. The case of the prosecution, briefly, is that on 6.6.15, the complainant Md. Rubul Ali lodged the FIR before the Officer-in-charge of Tamulpur police station, alleging inter-alia that on 5.6.15 at around 4.30 pm., in his absence in the house, enticed and took his 11 years old victim daughter from the road to the house of the accused. Thereafter, the accused committed rape on the victim girl after pulling her down on the bed and gagging her mouth. Accordingly, the victim girl reported the incident to her mother who informed local public. Hence, local public apprehended the accused and handed over to the police.

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2. Accordingly, the police registered the Tamulpur PS. Case No.97/15 after it was forwarded by I/C of Gandhibari OP vide GDE No.66 dated 5.6.15 and thus, started the process of its investigation. During the investigation, I/O visited the place of occurrence and examined the witnesses. I/O drew up the sketch map of the place of occurrence, sent the victim girl for medical examination and to record her statement u/s 164 CrPC. The accused was arrested by I/O. Further, I/O seized the wearing garments of the victim girl and sent it for FSL examination. At the end of the investigation, I/O having found prima-facie material against the accused, submitted the charge-sheet against the accused to face trial in the court.

3. The accused when appeared in the court, was furnished with the relevant copy of the case immediately. After hearing of the parties and on perusing the material on record, the charge u/s 4 of POCSO Act was framed against the accused. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution during the trial, examined as many as, eight (8) witnesses including the I/O and M/O to support its case. The accused in his statement recorded u/s 313 CrPC., denied all incriminating circumstances appeared against him in the evidence. The argument of the parties was heard at length and perused the evidence on record.

#### **POINT FOR DETERMINATION :**

5. Whether on 5.6.15 at about 4.30 pm., at No.2 Chiknibari village under Tamulpur police station, committed penetrative sexual assault on the victim girl who is the minor daughter of the informant Rubul Ali ;

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#### **DECISION AND REASON THEREFORE :**

6. Learned Public Prosecutor during the argument, submitted that in a case where sexual offence is alleged by the victim, any eye-witness cannot be expected to prove the facts. Because such offence is basically taken place in the screen cover for which no eye-witness is found to corroborate the version of the victim or other main prosecution witnesses. But that is not the settled position of law. In many a case, reliance is given heavily on the sole testimony of the victim person as she is not an accomplice with the accused subject to the fact that her testimony is reliable wholly without any element of doubt. In the instant case, the



victim girl who is a minor in age, tendered evidence without any elements of controversy. Therefore, relying on her evidence, it can be held that the prosecution has been able to bring home the charge against the accused and accordingly, the accused is liable to be punished as per law, he maintained.

7. Per contra, learned counsel for the accused person, submitted that there is not a single witness of the prosecution is found reliable. He submitted that to prove the case against the accused, the prosecution must perform the solemn duty to prove its case beyond all reasonable doubt. But in the instant case, it appears that even the victim girl is not supporting the prosecution story. There is no other evidence tendered by the prosecution to believe that the accused committed the offence that attracts u/s 4 of POCSO Act. Hence, the accused is entitled to get benefit of doubt thereunder, he argued.

8. From the record, it appears that the prosecution brought allegation against the accused for committing the offence of penetrative sexual assault upon the victim girl which is codified u/s 4 of POCSO Act. One of the main factor to attract the offence under POCSO Act is that the victim must be a child within the meaning of Section 2(d) of POCSO Act. Once it is held that the victim is a child in the eye of law, there is no difficulty to proceed on the other aspect of the case against the accused. So first of all, it is necessary to find out if the victim girl is minor or not.

9. The provisions u/s 2(d) of POCSO Act envisages that *child means any person below the age of eighteen years*. So if the victim person is found under the age of eighteen years, then it can easily be held that she or he is a child within the meaning of POCSO Act.

10. So far as, the evidence of the prosecution, is concerned, it appears that the complainant Md. Rubul Ali as PW1 who is the father of the victim girl, deposed in respect of age of the victim that the victim girl was 11 years old at the time of occurrence. He submitted the original birth certificate of the victim girl. MRExt.4 is the copy of birth certificate of the victim. The victim girl as PW2 (her name is withheld due to bar of law) claimed that she that she is 15 years old at the time of deposition in the court. Further, PW3 Falani Begum, the wife of PW1 and mother of the victim girl, corroborates the version of PW1 that PW2 was 11 years old at the time of occurrence. Further PW5 Ekaruddin Ahmed and PW6 Taisen

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Baksa. Mushalburi



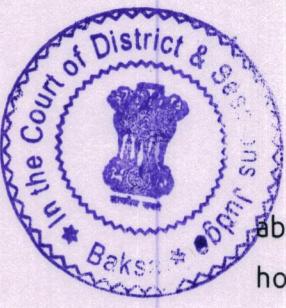
Hussain supports the claim of PW1 that PW2 was 10/ 11 years old at the time of occurrence. The medical evidence tendered by PW7 Dr. Urmi Devi Choudhury is that as per radiological evidence, PW2 is below 14 years. All the evidence of the prosecution witnesses, including medical evidence shows that the victim was below 18 years of age at the time of occurrence. MRExt.4 also, supports the fact that the date of birth of victim was 10.3.2004. The occurrence took place on 5.6.15. It appears that no discrepancy surfaces in the evidence on record that the victim girl is above 18 years of age. So there cannot be any hesitation to hold that PW2 the victim girl, was a minor girl and aged below 18 years at the time of occurrence. Hence, she was a child within the meaning of Section 2(d) of POCSO Act. Therefore, the provisions under POCSO Act is applicable in this case against the accused.

11. Having found that the victim girl was a child at the time of occurrence from the evidence of prosecution evidence, it is now, to find out if the victim was subjected to offence of penetrative sexual assault as provided u/s 3/4 of POCSO Act. PW1 stated that he filed the ejahar of the case vide Ext.1 which he proved. Further PW1 stated that on the fateful day at about 4.30 pm., he was reported that the victim girl was (PW2) while going on the road, the accused induced her to come to his house and thereafter, committed rape on PW2 by gagging her mouth. Accordingly, he came back to home and got the report of incident from his wife. PW2 reported the matter to her mother. Hence, his wife (PW3) informed the local public. PW3 along with local public went to the house of the accused and brought him to village school to face local bichar. But the accused denied the allegation before the bichar. Thereafter, he filed the ejahar and police took away the accused. The police sent PW2 for medical examination and to record her statement in the court.

12. In the cross-examination, PW1 stated that the accused is a married person. The daughter of the accused also, got married. He examined the body of PW2 but did not find any nail biting mark on her private part. On the fateful day, one Najmi accompanied PW2. His wife (PW3) gave the wearing appurtenances of PW2 to the police on the fateful day. He stated that members of ABMSU caught the accused and handed over to police. Thus, the evidence of PW1 shows that he is reported witness of the occurrence but he is the complainant of the case.

13. PW2 is the victim girl and sole victim of the alleged occurrence. Hence, she is star prosecution witness. She deposed that on the fateful day at

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about 4.30 pm., while she was playing with her friends, on the road in front of her house, the accused came and took her forcefully to his house by pulling her hands. The accused in his house, gave her a bucket of water to clean the house. While she completed half of cleaning work, the accused asked her to stop and took her on to a bed and committed rape on her by removing her cloth. When she wanted to shout, the accused gagged her mouth. Thereafter, the accused gave her Rs.100/- with advice to return Rs.50/- and not to disclose the matter to anyone. Accordingly, she did not disclose the incident to anyone. Later on, she reported the incident to PW3 her mother. On hearing the incident, PW3 called for a local bichar. On the same day, police came and the accused was handed over to police. The police sent her medical examination vide Ext.2. The police seized her under garments vide Ext.3. MRExt.1 is her jangia, MRExt.2 is her blue mini skirt and MRExt.3 is her black colored T-shirt.

14. In the cross-examination, PW2 stated that the house of the accused is situated after crossing four houses from her house. She was playing with her friend namely ; Najmin Sultana. The name of the daughter of the accused is Bhuli. She denied the suggestion that her father sold out mother of Bhuli. She stated further that she did not shout when the accused took her to his house. The accused kept her on the bed for about 5 to 10 minutes. Prior to the occurrence, she used to visit the house of the accused. Thus, the evidence of PW2 corroborates the claim of the prosecution.

15. PW3 Ms. Falani Begum is the mother of PW2 and wife of PW1. She was not eye-witness of the occurrence. She stated inter-alias that on the fateful day, at about 4.30 pm., PW2 went to the house of her friend to play. While the accused called PW2 to his house but PW2 refused. Hence, the accused forcefully took PW2 to his house. The accused asked PW2 to clean the floor of his house by offering her a bucket of water and a piece of cloth. Before completing the cleaning work, the accused asked PW2 to stop and put PW2 to seat on a bed. Thereafter, the accused removed the cloth of PW2. The accused by gagging the mouth of PW2, committed rape on PW2. After that the accused gave Rs.100/- to PW2 with condition to return Rs.50/- back to him and advised PW2 not to disclose the incident to anybody. PW2 returned home by crying. Hence, she inquired it and as such, PW2 reported her about the incident. Immediately, she informed the public who apprehended the accused and brought to school. The public held a bichar where the accused admitted his guilt. Thereafter, public handed over the accused to police. Her husband filed the case. The police sent PW2 for her medical

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examination and to record her statement in the court. She claimed that she submitted the birth certificate of PW2 to police. The garments of PW2 were taken away by police.

16. In the cross-examination, PW3 stated that public assaulted the accused physically. She had no knowledge if a case was filed against her husband prior to her marriage in connection with wife of the accused. Apparently, PW3 corroborates the version of PW2.

17. PW4 Ranjit Biswas deposed inter-alia that on the fateful day, he came to know that the accused gave Rs.100/- to PW2 to clean up the floor of the house of the accused. After cleaning, PW2 went back to her home with the money. But after sometime, PW1 came to the house of the accused assaulted the accused physically and damaged the house as well.

18. In the cross-examination, PW4 stated that the accused filed a case against PW1 for kidnapping the wife of the accused. Hence, there was no good relation existed between the accused and PW1 for long time. PW1 forced PW2 to speak against the accused that PW2 was sexually assaulted by the accused. Out of grudge, PW1 filed the false case against the accused. Thus, the version of PW4 contradicted the version of PW1 and 2.

19. PW5 Ekrauddin Ahmed deposed inter-alia that on the fateful day at about 9 am., he heard hue and cry about sexual assault upon PW2 by the accused. In the meantime, police came and took away the accused. PW2 told before local public that the accused committed rape on her. Apparently, PW5 is found to be merely a hearsay witness of the occurrence.

20. PW6 Taisen Hussain deposed inter-alia that on the fateful day in the evening, he heard hue and cry in the village at the place of occurrence. Accordingly, he came to the school of Siknibari where huge public gathered and the accused was brought thereto. He heard that the accused committed rape on PW2 after offering Rs.100/-. In this connection a local bichar was held where commotion took place. In the meantime, police came and took away the accused. Thus, it appears that PW6 was only witness of local bichar.

21. PW7 Dr. Urmila Devi Choudhury is the medical officer who examined

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PW2 medically. She deposed inter-alia that on examination of PW2, she found that her external genitalia was healthy and her hymen was intact. Finger cannot be introduced into her vagina. Vaginal swab was taken by a small swab holding stick. Vaginal swab was sent for test but no sperm was seen. Public hair was not found and developed. Nails scrubbing was taken and sent on one small plastic packet containing nail scrubbing which was found negative for blood and any other materials. No pubic hair was found. One panty and skirt which was wet after the incident with water. Result from FSL department gave negative test for blood and any other materials and human semen. X-ray was advised for age estimation. Radiological evidence estimates she was below 14 years of age. After all at the time of examination, her impression not consistent with recent sexual intercourse or assault.

22. Accordingly, PW7 submitted the medical report of PW2 and proved it vide Ext.2 with X-ray report vide Ext.4. apparently, PW7 does not lend support to the prosecution case.

23. The PW8 I/O Naren Ch. Rabha deposed that on 5.6.15 while he was posted at Gandhibari OP., he received the information that the accused was held up by the local public on the allegation of molesting a girl. Hence, the informant filed the FIR. He lodged the GDE No.66 dated 5.6.15 vide Ext.1 and forwarded it to Tamulpur PS to register of a case. In the meantime, he proceeded to the place of occurrence and saw that local public held up the accused in a school. He brought the accused to police station. The O/C Tamulpur police station registered the Case No.97/15 and endorsed him to investigate. During the investigation, he arrested the accused and sent the victim girl for medical examination and to record her statement u/s 164 CrPC. He seized wearing cloths of the victim vide Ext.3. he drew up the sketch map of place of occurrence vide Ext.5. He sent the seized articles for FSL examination and collected the report vide Ext.6. he identified the seized jangia vide MRExt.1, a mini skirt vide MRExt.2 and a black coloured T-shirt vide MRExt.3. he collected the birth certificate of the victim girl vide MRExt.4. at the end of investigation, the charge-sheet was filed vide Ext.7 against the accused.

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24. In the cross-examination, I/O stated that neighbouring persons namely ; Giyasuddin and Bahar Ali were not made witnesses of the case. I/O controverted the statement of PW6 that he did not state earlier that he(PW6) heard that the accused gave Rs.100/- to the victim girl. He found local member of ABMSU at the spot.



25.

Thus, after going through the evidence of the prosecution witnesses, it appears that there is no dispute that the accused was held up by local public as claimed by PW1. The I/O also, corroborates the said fact that he found accused was held up in a school by local public. It is not denied that the occurrence took place in the house of the accused. It cannot be denied that the victim girl visited the house of the accused on the fateful day and previously as well since the house of the accused is near the house of the complainant. It is already found that the victim girl (PW2) is a minor girl. The version of PW1 that PW2 was raped by the accused by gagging the mouth, is corroborated by PW2 and 3. Both PW1 and 3 are the parents of PW2 and they are reported witnesses of the occurrence. Similarly, PW5 and 6 are found reported witnesses of the occurrence but they supported the version of the prosecution case.

26.

PW4 however, does not lend support to the prosecution case neither to PW1, 2 and 3 as well. His version discloses that there was enmity exists between the accused and PW1 since it is alleged that PW1 kidnapped the wife of the accused. It is come to notice from the cross-examination of PW4 that PW1 forced PW2 to speak against the accused for sexual assault. In the statement u/s 313 CrPC, the accused pointed out that the complainant of the case kidnapped his wife and till now, the accused could not recover his wife. Apparently, PW4 is an independent witness and has no interest in the case. Hence, his version cannot be disbelieved immediately even though no other witnesses corroborate his claim. Relying the version of PW4, it can be held easily that there is enmity exist prior to the occurrence and hence, his version that PW1 compelled PW2 to speak against the accused to save himself from the allegation of kidnapping, cannot be ruled out.

27.

It appears that the victim (PW2) is a minor girl who stated that she was raped by the accused. She narrated that the accused took her to a bed in side the house and after removing her cloth, committed rape on her. If there was rape, there must be penetration into her vagina to attract the offence u/s 4 of POCSO Act. But the medical evidence discloses that the hymen of the victim was intact while finger cannot be introduced in her vagina. Thus, medical evidence makes it more clear that there was no penetration into the vagina of PW2. Further, the medical evidence discloses that FSL examination report gave negative test for blood or other material and human semen. I/O stated that wearing under-garments of the victim was sent for FSL examination. Hence, the report of FSL gave negative test means that no penetrative sexual assault caused to PW2. Thus, it appears that the version of PW2 corroborated by PW1 and 3 mainly, contradicted by medical

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evidence. Such contradiction renders the version of PW2 under doubt. It is highly probable that PW2 being a minor, is vulnerable of being tutored by elder persons particularly, by her parents being PW1 and 3. More particularly, it is highly possible that PW1 being father of PW2, would put his best effort to influence/ tutored his minor daughter to speak *albeit* falsely against the accused. In view of above, the evidence of PW2 along with the claim of PW1 and 3, come under doubt that if the accused is involved in the alleged crime u/s 4 of POCSO Act and their evidence is not safe to act upon and reliable to believe. As such, the accused is entitled to get benefit for such doubt in the evidence of the prosecution witnesses. Accordingly, the accused is given the benefit of doubt.

28. Under the above facts and circumstances of the case, it is found that the prosecution is not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 4 of POCSO Act. The accused is therefore, acquitted and set at liberty. His bail bond is however, kept in force u/s 437-A CrPC. The seized articles shall be destroyed in due course of law. Forward a copy of judgment to the District Magistrate, Baksa at Muzalpur. It appears that the victim of the occurrence is entitled to get compensation money as per Assam Victim Compensation Scheme. Hence, this court recommends payment of monetary compensation to the victim of the case immediately by DLSA, Baksa district. Inform accordingly.

29. Given under the hand and seal of this court on this 18<sup>th</sup> day of November 2019.

Dictated and corrected by :

  
Judge S. C. Das,  
Baksa, Muzalpur  
Judge, Special Court  
Baksa, Muzalpur

  
Judge S. C. Das  
Judge, Special Court  
Baksa, Muzalpur  
Baksa, Muzalpur

Typed by :  
P. Deka, Com. Typist

**ANNEXURE :****List of prosecution witness :**

PW1 ... Rubul Ali ... complainant  
PW2 ... victim girl ( name is withheld )  
PW3 ... Smti. Falani Begum  
PW4 ... Ranjit Biswas  
PW5 ... Fakaruddin Ahmed  
PW6 ... Taisen Hussain  
PW7 ... Dr. Urmi Devi Choudhury ... m/o  
PW8 ... Nayanmoni Das ... l/o

**List of defence witness :**

Nil

**List of documents exhibited :**

Ext.1 ... FIR  
Ext.2 ... medical report  
Ext.3 ... seizure list  
Ext.4 ... x-ray report  
Ext.5 ... sketch map  
Ext.6 ... FSL report  
Ext.7 ... charge-sheet

**Material exhibited :**

MRExt.1 ... jangia  
MRExt.2 ... mini skirt  
MRExt.3 ... black T-shirt  
MRExt.4 ... birth certificate

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