IN THE COURT OF THE SPECIAL JUDGE AT JORHAT

Present: Sri Madhurjya Narayan, AJS

Special Judge, Jorhat

SPECIAL CASE NO. 13 OF 2018 (G.R. Case No. 20 of 2018) Jengraimukh P.S. Case No. 06 of 2018

State of Assam

-Versus-

Sri Nampi Pegu, Son of Late Gorokhya Pegu, Resident of Kumarbari Gaon, P.S. Jengraimukh, District-Majuli.

.... <u>Accused</u>

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat

For the Accused: Sri Jayanta Deva Sarmah,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 376 [e] [i] OF INDIAN PENAL CODE READ WITH SECTIONS 4 & 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 09-05-2018

Date of prosecution evidence: 23-07-2018; 08-08-2018; 05-09-2018;

18-12-2018 & 30-04-2019

Statement of Accused

Recorded on : 29-05-2019

Date of Argument : 16-08-2019

<u>Date of Judgment</u>: 30-08-2019

<u>JUDGMENT</u>

- The prosecution case, in brief, is that on 24/02/2018, informant Sri Hemanta Mili, lodged a written ejahar with Jengraimukh Police Station, thereby alleging inter-alia, that on 23/02/2018, around 4 p.m., in absence of the informant as well as his wife, accused Sri Nampi Pegu entered his huse and after gagging the mouth of their eight year old daughter [hereinafter referred as (X) in order to screen her identity], committed rape on her. At that moment, they entered their house and witnessed the incident and the accused person fled away. Their victim daughter was taken to Jengraimukh hospital, wherefrom she was referred to Garmur hospital for better medical treatment.
- **2).** On receipt of the aforesaid F.I.R. by the Officer-in-charge, Jengraimukh P.S., the same was registered as Jengraimukh P.S. Case No. 06/2018 under Section 376 [2] [i] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. The Officer-in-charge, Jengraimukh P.S. S.I. Sri Hema Kanta Nath himself took up investigation of the case.
- **2 (1)** During the course of investigation, the I.O. visited the place of occurrence, prepared Sketch Map of the same, recorded statements of the witnesses and forwarded the accused Sri Nampi Pegu after arresting him. He also got the statements of the victim recorded in the Court under Section 164 of Cr.P.C. Then on completion of investigation, the I.O. laid charge-sheet against accused Sri Nampi Pegu to stand trial in the Court under Section 376 [2] [i] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012 [in short, POCSO Act, 2012].
- 3). On production of the accused person before this Court, my learned predecessor-in-court, after furnishing the copies of relevant documents and upon hearing the learned counsel for both sides on the point of consideration of charge and perusing the relevant materials, finding a prima-facie case under Sections 376 [e] [i] of IPC read with Sections 4/8 of POCSO Act, 2012, framed

formal charge there under against the accused person. Particulars of accusations of above charge on being read over and explained to the accused, he pleaded not guilty and claimed to be tried.

- **4).** To bring home the charge, the prosecution examined as many as **10 [ten]** witnesses including the victim, her parents including her father who is the informant of the case. Further, the prosecution side exhibited the statement of the victim [X] recorded under Section 164 of Cr.P.C. as Exhibit-1, statement of informant Sri Hemanta Mili recorded under Section 164 of Cr.P.C. as Exhibit-3, the ejahar as Exhibit-2 and the Sketch Map of the place of occurrence with index as Exhibit-6.
- on closure of the prosecution evidence, statement of the above named accused was recorded under Section 313 of Cr.P.C. in respect of the incriminating circumstances that surfaced against him in the evidence on record. No defence evidence was led in the instant case.
- 6). I have heard arguments advanced by the learned counsel for both sides. I have also scrutinized the entire evidence of witnesses as well as all relevant materials, including the exhibits on record.
- **6 (i).** Learned Special P.P. Sri Muhidhar Dutta submitted that there are sufficient materials on record to prove the guilt of the accused person beyond reasonable doubt and as such, he be dealt with. On the other hand, learned Defence Counsel Sri Jayanta Deva Sarmah, argued that prosecution evidence lacks credibility and reliability. And as such, the accused person be acquitted of the charge.

7). POINTS FOR DETERMINATION:-

Whether on 23/02/2018, around 4 p.m., at Kumarbari Gaon Beruchuk, under Jengraimukh P.S., the above named accused person:

- [i] committed rape on the victim daughter 'X' of the informant Sri Hemanta Mili?
- [ii] committed penetrative sexual assault upon the victim 'X', who was a minor?
- [iii] committed sexual assault upon the victim 'X' who was aged about eight years but below sixteen years?

DISCUSSION, DECISIONS AND REASONS THEREOF:

- **8). PW-1/victim 'X'** deposed that the incident had taken place in the morning hours. At that time, when she was alone at the house, accused caught her hand and removed her pant and did bad work with her. That her parents then came and the accused person was present at their house at that time.
- **8 (i).** During cross-examination, PW-1 stated that the accused person is her maternal uncle and he used to visit their house often, prior to the incident. She admitted that the accused person did not do any bad work with her private parts.
- **9). PW-2/Smt. Bijumoni Mili** is the mother of victim/PW-1. She deposed that accused person is her related brother and on the date of the incident, she went to the paddy field alongwith her husband. That when she returned to her house, around 4 p.m., she found the pant of the victim/PW-1 removed. That the accused person confessed in her presence that he had removed the pant of the victim/PW-1 and her daughter [PW-1] also told her about the same.
- **9 (i).** During cross-examination, PW-2 stated that the accused person used to visit their house often prior to the incident. That she did not witness the accused doing any bad work with her victim daughter/PW-1.
- **10). PW-3/Sri Hemanta Mili** is the **informant** and father of the victim/PW-1. He deposed that on the date of the incident, he went to the paddy

field alongwith his wife/PW-2 and returned home around 4/5 p.m. That he found victim was lying on the bed with her pant removed. That he saw the accused standing a little distance from her. That he then called the neighbourers, when Bhim Kanta, Binod, Prafulla and some other villagers came to his house and he narrated the incident to them. That after sometime, his wife/PW-2 came.

- **10 (i).** During cross-examination, PW-3 stated that they had settled the matter amicably and did not want to proceed with the case.
- 11). From the evidence of PW-1/victim, it is seen that the accused person caught her by her hand, removed her pant and did bad work with her. However, the term 'bad word' is wide and prosecution failed to elicit from the witness what she implied by the term 'bad word'. During cross-examination, PW-1 admitted that the accused did not do any bad work with her private parts. As deposed by PW-3/Sri Hemanta Mili, on his return home he found the victim/PW-1 lying on the bed with her pant removed and also found the accused person standing at a little distance from her. As deposed by PW-3, after neighbours namely Bhimkanta, Binod and Prafulla came to his house, his wife/PW-2 also came home. Wife of the informant as PW-2 further deposed that the accused confessed in her presence that he had removed the pant of the victim/PW-1. It has been deposed by PW-3 that Bhimkanta, Binod & Prafulla reached his house before his wife/PW-2 came. Under the circumstances, they ought to have witnessed the pant of the victim/PW-1 removed and the accused confessing to his act. However, prosecution failed to examine the said neighbours of the informant/PW-3, namely Bhimkanta, Binod & Prafulla, which is a serious loophole on their part and raises a presumption under Section 114 [g] of the Evidence Act that "evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it".
- **12).** As per the ejahar [Exhibit-2], after the incident, the victim/PW-1 was first taken for medical treatment to Jengraimukh Mini Primary Health Centre and from there, she was referred to Garamur Hospital for further treatment. **PW-**

- **4/Dr. Amit Kumar Doley,** Medical Officer of Jengraimukh Mini Primary Health Centre, deposed that on examination of the victim/PW-1, he did not see any external bleeding or injury. He also deposed that the patient complained of pain in the vagina and she was referred to Garmur First Referral Unit. The Medical Officer of Garmur Civil Hospital **Dr. Ananda Mohan Das,** who had examined the victim/PW-1, has been examined as **PW-7** and said Medical Officer also did not find any sign of sexual assault. So, what transpires is that the medical evidence on record has not supported the case of the prosecution.
- 13). PW-5/Sri Lakhi Kanta Pegu deposed that on the date of the incident, he was at Jonai and on his return home, he heard from one Sri Manish Pegu that the accused person was roaming near the house of the victim/PW-1. PW-6/Smt. Aradha Mili deposed that on the date of the incident, she was at her work place and she heard that the accused person committed bad work with the victim/PW-1. The evidence of PW-5 & PW-6 are accordingly hearsay and inadmissible.
- **14). PW-8/Smt. Janata Mili** and **PW-9/Sri Dhoroni Pegu** had been declared hostile on the prayer of prosecution and no part of their evidence, supported the prosecution case. Also, their statements made before the police, as brought out by the prosecution during cross-examination, even if held to be true, are hearsay and inadmissible.
- **15).** The evidence of the **I.O. Sri Hemo Kanta Nath** as **PW-10** also does not lend any support to the prosecution case except that on handing over the case diary by him, Smt. Indreswari Pegu on finding sufficient material against the accused person, submitted charge-sheet against him under Section 376 of IPC read with Section 4 of The POCSO Act, 2012. However, as reveals from the evidence on record, no sufficient materials had been found against the accused person during trial so as to connect him with the alleged offence.

- **16).** Based on the discussions so made herein before, it is found that the evidence on record falls short of connecting the accused person Sri Nampi Pegu with the alleged offence. Accordingly, he is entitled to acquittal on benefit of doubt.
- **17).** Accused is on bail. The bail bond of accused is extended for another **06 [six]** months from today as per provision of Section 437-A Cr.P.C.
- **18).** Given under my hand and seal of this Court on this **30th** day of **August 2019**.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Bijumoni Mili, mother of the victim.
PW-3	Sri Hemanta Mili, father of the victim-cum-
	informant of the case.
PW-4	Dr. Amit Kuamr Doley, M.O., Jengraimukh Mini
	Primary Health Centre.
PW-5	Sri Lakhi Kanta Pegu, cultivator.
PW-6	Smt. Aradha Mili, cultivator.
PW-7	Sri Ananda Mohan Das, Retired M.O.
PW-8	Smt. Janata Mili, another cultivator.
PW-9	Sri Dhoroni Pegu, cultivator.
PW-10	Sri Hemo Kanta Nath, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of the victim/PW-1 under Section 164
	Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Statement of PW-3/Sri Hemanta Mili under Section
	164 Cr.P.C.
Exhibit-4	Medico-legal report of the victim
Exhibit-5	Another medico-legal report of the victim
Exhibit-6	Sketch Map of the place of occurrence with index
Exhibit-7	Charge-sheet

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora,

(Stenographer Grade-I)