IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

Spl(POCSO) Case No.2 of 2016.

(U/S: 376(2)(i) & 377 I.P.C. read with Section 4 of POCSO Act)

State
-Versus-**Sri Lakhi Ram Deka**S/O Sri Dandi Ram Deka
Village -No.2 Kopati grant
P.S- Dalgaon,

Dist-Darrang (Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma.

AND

Learned advocate for the accused :Mr. Hemanta Sarma

Evidence recorded on :01/08/17, 16/11/17, 25/04/18,

03/01/18, 01/02/19, 09/04/19

Argument heard on :25/09/2019

Judgment delivered on :03/10/2019.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 09/07/2015 one Miss Safia Khatun lodged an FIR before the O/C Dalgaon Police Station stating that on 03/07/2015 at about 3 p.m. her 9 years old daughter Miss X was intercepted by the accused while the former was on her way to sell log in the Kopati daily market and she was told by the accused that he would buy log from her and thereby he took her side of the road and she was raped leaving injury on her vagina. It is also mentioned in the FIR that due to intervention of the villager to settle the matter the lodging of FIR was delayed.
- 2. Having received the ejahar, Police registered a case and one Someswar Konwar, S.I. of Police was entrusted to investigate the matter. During the course of investigation besides recording the statement of the witnesses, the statement of the victim was recorded in the court and she was also medically examined in Mangaldai Civil Hospital. Finally, the I.O. has submitted charge sheet against the accused U/S 376(2)(g) IPC read with Section 4 of POCSO Act.
- 3. The committing Magistrate committed the case to this Court for disposal of the case.
- 4. On appearance of the accused before this Court, the learned advocates were heard on the point of charge. A prima-facie case against the accused person U/S 376(2)(i) I.P.C. read with Section 4 of POCSO Act and U/S 377 I.P.C. found and the written charge U/S 376(2)(i) read with Section 4 of POCSO Act and 377 I.P.C. explained and read over to the accused to which the accused pleaded not guilty.

5. **Point for determination**:

(i) Whether on 03/07/15 at 3 p.m. the accused committed rape of a minor girl Miss X and thereby committed an offence U/S 376(2)(i) I.P.C. read with Section 4 of POCSO Act?

(ii) Whether the accused person on the same date, place and time committed carnal intercourse against the order of nature with the victim Miss X?

REASONS AND DECISION THEREON

- In the course of trial, the prosecution examined Dr. Ajanta Bordoloi(PW1),
 PW2 Arfan Ali, PW3 Saharu Kandula, PW4 Miss X, PW5 Sairuddin, PW6
 Safiya Khatun and PW7 Someswar Konwar.
- 7. PW1 has stated in her evidence that on 09/07/2015 on Police requisition she examined Miss X aged 9 years and found no spermatozoa in the vaginal swab examination and as per the radio logical examination her age was 10 to 12 years. Dr. Bordoloi also did not find evidence of recent sexual intercourse and five nos. of old stitches found in perineum region of the victim.
- 8. PW2 Arfan Ali, maternal uncle of the victim has stated in his evidence that on the next day of the incident he learnt about the incident from one Fajal Ali. Thereafter, he went to her sister's house, but he did not find his sister and her victim daughter in the house. At that time they were at Dalgaon Police Station. Thereafter, he along with some other persons went to the Dalgaon Police Station. He was not examined by the I.O. during investigation.
- 9. PW3 Saharu Kandula knew nothing about the incident.
- 10. PW4 victim Miss X has stated that on the day of the incident at about 3 p.m. while she was carrying wood for sale at Kopati bazaar she came acrossed with accused Lakhiram Deka who told her that he would purchase wood from her. Then she was taken to a nearby jungle and she was raped there. Thereafter, the accused took her to the road and in the meantime she met her father. She proceeded with her father to her house. Reaching her house she narrated the incident to her mother.

- 11. PW5 Sairuddin, father of the victim has stated that on the day of the incident her two daughters namely Miss X and Azida went out to collect fire wood from a nearby place. After sometimes Azida came and told him that Miss X was taken by one person and he also driven her away. Therefore, he went out in search of Miss X. On the same day at about 7 p.m. Miss X came home with her blood stained cloth. When inquired Miss X narrated that on the previous day she was raped by one person. She learnt from one Siddik that he saw Miss X and Lakhiram at a time and the accused taken Miss X.
- 12. PW6 Safiya Khatun, mother of the victim has stated that on the day of the incident her daughter Miss X and Azida went out to sell wood. In the evening at 6 p.m. Azida came home and told her that Miss X was taken by the accused Lakhiram. That after sometime Miss X returned. She told her that Lakhiram raped her. She went with Miss X to the place where Miss X was raped and from that place, they recovered Lakhi Ram's sandal and cloth. Thereafter, Lakhi Ram came to her house and proposed for a compromise, but she refused. After 3 days from the date of incident an FIR was lodged.
- 13. In her cross-examination, she asked one Khadimul to write an FIR regarding an incident, but Khadimul told her that by disclosing the facts in such a way Miss X would not get medical facility. He advised that if Miss X was shown that she sustained injury on falling in the latrine then she would get the medical facility. Therefore, she along with Khadimul and Miss X went to Bahbari Dispensary and Miss X got medical treatment there. Thereafter, they went to Dalgaon Police Station. In the Dalgaon Police Station a Mohora wrote the FIR. When she came out in search of Miss X she found Miss X sitting on the road. At that time she was weeping. She was asked why she was weeping, but she did not reply. On the following day morning Miss X was found sitting here and there and she also had temperature. When she was again asked then she told that she was raped by Lakhiram on the previous day under a bamboo grove. Thereafter, mother of the accused approached them for settlement, but

they opposed the settlement. In her cross-examination, she also stated that the villagers of her village asked for a land from the father of Lakhiram to construct a Mazjid , but Lakhiram's father declined to offer land for construction of a Maszid.

- 14. PW7 Someswar Konwar has stated that he was entrusted to investigate the case by the O/C, Dalgaon Police Station. Thereafter, he went to the place of occurrence, recorded the statement of the witnesses, sent the victim to doctor and collected the medical examination report and he finally submitted charge sheet against the accused.
- 15. The accused person denied the indictments.
- 16. Heard argument advanced by the learned counsel for the sides.
- 17. On a meticulous examination of the evidence advanced by the prosecution witnesses, it is seen that there are different stories which crept up in their evidence and the facts stated by the prosecution witnesses do not meet in one point. PW1 Arfan Ali, who is the maternal uncle of the victim learnt from villagers by one Ataful and Kurban that on the pretext of buying fire wood from the victim he took the victim to his house and raped there. This is one set of facts. PW5 Sairuddin, who is the father of victim Miss X is that on the day of the incident though her sister namely Miss X and Azida went out to collect fire wood from nearby place Azida came soon and informed him that Miss X was taken by person. He went out in search of Miss X, but did not find her. At 7 p.m. Miss X came. On the following day her mother discovered blood in her wearing cloth. When inquired Miss X told that she was raped by one person on previous day. One Siddik told him that he saw Miss X being taken away by Lakhi Ram on the day of the incident. PW6 Safiya Khatun, wife of PW5 Sairuddin also stated a different way on her evidence. She stated that on the day of the incident Miss X and Azida went out to sell wood. Azida returned and informed her that Miss X was taken by Lakhiram Deka. After sometime Miss X came and informed her that Lakhiram Deka had raped

her. Thereafter, she went to the place of occurrence with Miss X and recovered sandal and cloth of accused Lakhi Ram.

- 18. PW6 is the informant. In her evidence she admitted that after 3 days from the date of incident he lodged the FIR, but in her evidence she did not state why the delay was caused. It has come in her evidence that Miss X was taken to Bahbari Hospital. Thereafter, she attended Dalgaon P.S. and thereafter, an FIR was lodged against the accused. It was advised to her by one Khadimul that Miss X would not get medical treatment if real fact is disclosed. So, she was advised by Khadimul that to get a medical treatment at Bahbari hospital Miss X should be shown to have received injury by falling in the latrine. PW5 and PW6 are husband and wife. The fact stated by PW6 did not come in the evidence of her husband (PW5). According to the PW5 on the following day victim's mother discovered blood in the cloth worn by the victim and when inquired she told that she was raped by one person and it was Siddik, who told that he saw Miss X being taken away by Lakhi Ram Deka on the date of the incident. The victim who was examined as PW4 has stated that on the day of the incident at about 3 p.m. while she was carrying wood for sale to Kopati bazaar she met Lakhiram, who expressed his intention to buy wood and thereafter she was taken to nearby jungle where she was raped by Lakhiram by closing her moth with his "genji". Thereafter, the accused brought her to the road and in the meantime she met her father and reaching her home, she informed about the incident to her mother. From the evidence of the victim, (Miss X), it is seen that she knew accused Lakhiram Deka before, but in her father's evidence, it has come that the name of the accused was known to victim Miss X.
- 19. It is seen that the crux of the evidence advanced by the vital witnesses is deviated from each other to a great extent. If we discard the evidence of other witnesses and take only the evidence of victim Miss X(PW4), then also some unanswered question will be there. The evidence of a witness has to be considered with its entirety. She stated that she was on her way to sell wood she met Lakhiram. She was taken to a nearby jungle and she

was raped. Thereafter, she was taken to a road. Thereafter, she met her father. She did not disclose about the incident to her father. She went with her father, but she did not disclose anything to her father. The victim is a young girl. She is allegedly raped by matured person. Definitely she got a bitter and painful experience. After the incident she met her father. It is not expected that a young girl would say nothing to a person which is none but her father about the incident. If she was raped she had definitely had a mode to get the matter disclosed so that the offender would not escape and the offender be caught and handed over to Police. But the victim did nothing. The other witnesses also did not support her evidence so far the facts after the alleged incident of rape are concerned.

- 20. The direct evidence may not be available. In such case court relies available circumstantial evidence. It is held in Bijoy Kumar Arora -VS-State Govt. of NCT of Delhi reported in (2010) 2 SCC 353 that -The law relating to the circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and ,therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual event, but the circumstances cannot fail. Therefore, many a time it is aptly said that " men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be the fully established. Each fact sought to be relied must be proved individually.
- 21. In our case, the facts that came in the evidence of the prosecution witnesses are failed to give a common incident and the facts pulled apart each making the whole evidence of each witness except the formal witnesses unreliable and untrustworthy.

- 22. In the result, the accused deserves benefit of doubt. Thus, the accused Lakhiram Deka is acquitted for want of credible evidence. He is set at liberty forthwith.
- 23. Given under my hand and seal of this Court this 3rd day of October,2019.

(P.K.Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

(A)Prosecution witnesses:

(i)PW1 Dr. Ajanta Bordoloi (ii)PW2 Arfan Ali, (iii)PW3 Saharu Kandula (iv)PW4 Miss X (v)PW5 Sairuddin

(vi)PW6 Safiya Khatun

(vii)PW7Someswar Konwar

(B)Defense witness: Nil.

(C)Exhibits:

(i)Ext.1 medical report

(ii)Ext.2 FIR

(iii)Ext.3 sketch map

(iv)Ext.4 charge sheet

Sessions Judge, Darrang, Mangaldai.