IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 34 OF 2017

(Under Section 17/4 of the POCSO Act, arising out of G.R. Case No.

2079 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1) Sri Karlush Bhengra

Son of Late Alexus Bhengra Resident of Malizan Sonaibill, Police Station – Chariduar, Dist:- Sonitpur, Assam

2) Smt. Punam Sinkho

Daughter of Manual Sinkho,

Resident of Akabasti Benguligaon,

Police Station – Chariduar, Dist:- Sonitpur, Assam

Date of framing Charge :- 26/06/2018

Date of Recording Evidence :- 12/07/2018,

Date of Argument :- 12/07/2018

Date of Judgment :- 12/07/2018.

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. F. Haque & Ors, Advocates.

JUDGMENT

1. In this case accused person, namely Sri Karlush Bengra is put for trial for allegation of charge under section 4 of the POCSO Act and the

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other accused Smt. Punam Sinkho is also put for trial for allegation of charge under section 17 of the POCSO Act.

- 2. The prosecution case according to the FIR in brief is that in the morning about 10 AM of 31.05.2017 the informant's daughter Miss "X" aged about 11 years enticing by Smt. Punam Munda to their house at 18th mile and thereafter kidnapped her. On vigorous search, they could not trace out her. Hence, the prosecution case. The ejahar was filed by informant Smt. Aiti Topno before the O/C of Chariduar PS on 04.06.2017.
- On receipt of the aforementioned FIR, the Officer-In-Charge of 3. Chariduar Police Station registered a case being Chariduar P.S. Case No 131/17 under Section 366 of IPC. After completion of usual investigation, the O/C Chariduar Police station sent up the case for trial against the accused persons, namely, Sri Karlush Bengra and Smt. Punam Sinkho under Section 366(A) of IPC r/w Section 6 of POCSO Act.
- 4. On being appeared the accused persons before this Court, after hearing both parties, charge framed under section 4 of the POCSO Act, 2012 against the accused Sri Karlush Bhengra and also charge under section 17 of POCSO Act was framed against the accused Smt. Punam Sinkho and particulars of the charges were read over and explained to the accused persons to which they pleaded not guilty and claim to be tried.
- To substantiate the case, prosecution examined only two 5. witnesses in support of their case. After completion of evidence of the victim and the complainant, who is the mother of the victim, learned Counsel for the accused submitted to close the prosecution evidence on the ground that neither the complainant nor the victim could have reveals any of the ingredients of the alleged charges framed against the accused persons. The Ld. Counsel for the accused again submitted that even if examined the other prosecution witnesses, prosecution case would not

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develop. I have also heard the Learned Special Public Prosecutor who also conceded.

- 6. On perusal of the statement of the complainant Smt. Aiti Topno and the victim Miss "X" it appears that none of the said witnesses implicate any of the accused in any of the alleged charge against them. Therefore, even if examine the other prosecution witnesses, the prosecution case would not develop. Speedy trial is the right of the accused persons. Hence, for to secure ends of justice, prosecution evidence is closed. The statement of the accused persons u/s 313 CrPC is dispensed with due to lack of incriminating materials against the accused persons.
- **7.** I have heard argument put forwarded by learned advocate of both the parties.
- **8.** The point for decision in this case is that -
 - (a) "Whether the accused Smt. Punam Sinkho on 31.05.2017 at about 10 AM at Kalabari Chapori under Chariduar Police station, abet to commit penetrative sexual assault on Miss "X" (11 years) by the accused Karlush Bhengra and thereby committed an offence punishable under section 17 of POCSO Act?
 - (b) "Whether the accused Sri Karlush Bhengra on 31.05.2017 at about 10 AM at Kalabari Chapori under Chariduar Police station, committed penetrative sexual assault on Miss "X" (11 years) and thereby committed an offence punishable under section 4 of POCSO Act?

Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **10. PW 1, Smt. Aiti Topno,** mother of the victim as well as the informant of this case stated that the incident took place about one month

ago. At the relevant time she went to her works. Accused Punam took her daughter Somari to 18th mile. They searched her but did not find her. Thereafter, she has filed a case against the accused. Police recovered her daughter. She was medically examined by doctor and brought to the court for recording her statement u/s 164 CrPC. Thereafter, her daughter was handed over to her.

- 11. In her cross examination, she admitted that at the relevant time her girl may be 19/20 years. As she was not at home so she did not see how her daughter went out. She could not say from where police recovered her daughter and where she was staying at 18th mile. Her daughter also did not state anything about the occurrence after recovery her. She has filed the FIR on suspect against the accused Punam. The case was filed due to misunderstanding. She does not want to proceed with the case further. Thereby, she goodbye to the prosecution case.
- **PW 2, Miss "X"** who is the victim of this case has stated that she knows both the accused persons. The incident took place about 2 years ago. Punam took her to Malijan. Her mother afraid so she filed the case. She met Karlush at Malijan. She lived there for about one month in the house of Karlush who is the brother of Punam. She lived in the house of Karlush. Karlush slept with her, other than that he did not do anything to her. Thereafter, he took her to her house. After instituting the case, she was took to Ld. Magistrate to record her statement u/s 164 CrPC. Ext 1 is her statement and Ext 1(1-2) are her signatures.
- 13. In her cross examination, she admitted that she went to the house of Karlush as a guest at her own will. No one has forced her to go to the house of Karlush and none has doing any misdeed to her during her stay at Karlush's house.
- **14.** These much is the evidence of prosecution.

- 15. To prove the charged u/s 17 of POCSO Act, the prosecution must prove that:-
 - (I) Accused instigate any person to do that offence;
 - (II) Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence;
 - (III) Intentionally aids, by any act or illegal omission, the doing of that offence.
- **16.** Here in this case the statement of the victim nowhere reveals any of the materials as stated above. Therefore, the prosecution has failed to prove the alleged charge u/s 17 of POCSO Act against the accused Punam Sinkho.
- **17.** To prove the charge under section 4 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 3 of the POCSO Act.

Section 3 of the POCSO Act quoted as follows:

<u>Section 3. Penetrative Sexual assault,</u> - A person is said to commit "penetrative sexual assault" if —

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body o the

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child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

"The clause defines the offence of penetrative sexual assault. It provides that if a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or he manipulates any part of the body or the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or he applies his mouth to the penis, vagina, anus, urethra or the child or makes the child to do so to such person or any other person, he is said to commit the offence of penetrative sexual assault".

- 18. Here in the present case, neither the complainant nor the victim supported the prosecution case. The statement of the victim no way reveals any ingredients as stated above. The victim stated that Punam took her to Malijan and there she met Karlush. She lived there for about one month in the house of Karlush, who is the brother of Punam. She lived in the house of Karlush. Karlush slept with her, other than that he did not do anything to her. Thereafter, he took her to her house. On the other hand, in her cross examination, she admitted she went to the house of Karlush as a guest at her own will. No one has forced her to go to the house of Karlush and none has doing any misdeed to her during her stay at Karlush's house.
- **19.** In the case like section 4 of POCSO Act, the victim is the star witness. When the victim gives goodbye to the prosecution case, it will be futile to discuss the other evidence of the witnesses. Here in this case as

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stated above, the victim failed to reveal any materials against the accused

person.

20. Under such circumstances, I have no hesitation to hold that the

prosecution has categorically failed to prove any of the charge against any

of the accused persons beyond any reasonable doubt. Therefore, I acquit

the accused persons namely, Sri Karlush Bengra and Smt. Punam Sinkho

and set them at liberty.

21. The liabilities of the bailor are hereby discharged.

22. Let the G.R Case No. 2079/2017 be sent to Ld. committal Court

along with a copy of Judgment.

23. Given under my Hand and Seal of this Court on this the 12th day

of July, 2017.

(Ashok Kumar Borah)

SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah)

SPECIAL JUDGE,

SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Sri. Janmoni Deka, Steno

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APPENDIX

Prosecution witnesses:

P.W.1 - Smt. Aiti Topno, the complainant

P.W.2 - Miss "X", the victim

Witnesses for Defence: NIL

Prosecution Exhibit

Ext.1 - Statement of the victim u/s 164 CrPC.

Ext.1(1-2) - Signatures of the victim

Defence Exhibits : NIL Material Exhibits: NIL

(Ashok Kumar Borah) SPECIAL JUDGE SONITPUR: TEZPUR

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