# IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special 03 of 2018 corresponding to GR Case No.110/2018 & Dillai Police Station Case No. 03/2018 Under Section 18 of

the POCSO Act.

State of Assam

Versus

Shri Premchand Tamang

# Name of informant/complainant:

Shri Jonga Thapa S/o Sabilal Thapa Village: Hatikajan

P.S: Dillai

District: Karbi Anglong

# Name of the accused person facing trial:

Shri Premchand Tamang, S/O Shri Maikel Tamang Vill-Hatuka Kishan Basti

P.S: Dillai

District: Karbi Anglong.

#### Advocates appeared:

For the prosecution: Mr D. Deka, Public Prosecutor

For the accused : Mr Shyamal Shil. Argument heard on : 05.10.2018.

Judgment pronounced & delivered on: 10.10.2018.

### **JUDGMENT**

- It is a case of attempt to commit any offence covered by the POCSO Act alleged to have been committed by the accused, Shri Premchand Tamang.
- 2. The prosecution case in brief is that on 05.02.2018 the informant, Shri Jonga Thapa lodged an ejahar with Dillai Police Station stating inter alia that on that day at about 4 PM taking the advantage of absence of family members of his house enticed away his daughter, Miss Sunita Thapa aged 10 years to go to a nearby jungle and while trying to commit "Asot Kam" (illegal physical contact) with her, she raised hue and cry. Local people rescued her and managed to apprehend the accused. Thereafter, people gathered handed over the accused to the Police Station. On receipt of the written ejahar, O/C, Dillai Police Station registered a criminal case vides Dillai Police Station Case No.03/2018 under section 8 of the POCSO Act and he himself took the charge of investigation. On completion of the investigation, submitted charge-sheet was under sections 376/511 of IPC R/W Sec.8 of the POCSO Act against the accused person. Hence the prosecution case has come up.
- **3.** On completion of appearance of the accused person before this Court, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, I found sufficient grounds for presuming that the

accused person had committed the offence U/S 4 of the POCSO Act read with section 18 of the Act and accordingly, the charge was framed. The particular of the charged offence was duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

**4.** During trial, Prosecution has examined as many as 10 (ten) witnesses including the informant and alleged victim. Accused person has been questioned under section 313 of Cr.P.C. Defense examined none. Plea of defence is of total denial.

#### **Point for determination is:**

Tamang on 05.02.2018 at about 4 PM at Vill-Salakathar in a nearby jungle under Dillai Police Station attempted to commit penetrative sexual assault upon the victim punishable under sections 4 of the POCSO Act?

### 6. <u>Decisions and reasons thereof:</u>

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in

establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

- 7. PW-1 is Shri Jonga Thapa who has deposed that he is the informant of this case. The occurrence took place on 5<sup>th</sup> Feb, 2018. Victim-Miss Sunita Thapa is his niece. At the time of occurrence, she was 10 years old. Accused is his aunt's son. The victim informed him that accused took her to a jungle in pretext of searching cows and she was made lying on the ground by catching her hands and legs. The accused tried to rape her. She raised hue and cry. Nearby people rescued her and confined the accused, Prem Chand Tamang in the house of Sanjoy Kathar. Thereafter, he lodged the ejahar at Dillai Police Station. Ext.1 is the ejahar and Ext.1(1) is his signature. Later, police brought the victim to Diphu Civil Hospital for medical examination. Statement of the victim was recorded in the Court.
- 8. PW-2 is Shri Samuel Lugun who has deposed that he knows the informant, accused and the victim. The incident occurred on 05.02.2018. On the day of occurrence, he was in his house and the villagers informed him that accused, Premchand Tamang was confined in the house of one Kathar by surname and he met the victim in that house. She told him that the accused brought her to a jungle on pretext of searching cow at Salakatha Pathar. While he tried to rape her, she raised hue and cry and hearing her scream, nearby people came and apprehended the accused person. They rescued her. At that time,

Sunita Thapa was 10 years old. Later, Shri Jonga Thapa lodged the ejahar at police station and police arrested the accused at the place of occurrence.

- 9. PW-3 is Smti Maya Thapa who has disposed that he knows the informant, victim and accused person. Informant is her husband's brother. The victim is her daughter. The accused belongs to their village. The incident occurred on 5<sup>th</sup> day(month not mentioned) of this year. On the day of occurrence in the evening hours, her daughter-Sunita went for searching cows. At that time, she was absent at his house. On her return to house, she did not find Sunita and on being asked, two sisters of Sunita told that they were not aware as to where Sunita went. At that time, informant-longa Thapa and Gaonburah. Samuel Lagun brought the victim to her house. On her interrogation, the victim told that while she was going to bring their cows, the accused pulled her to a jungle and tried to rape her. She raised hue and cry. Nearby people and one Sanjoy Kathar rescued her from the clutches of the accused. Thereafter. Jonga Thapa lodged an ejahar at Dillai Police Station. Police sent the victim to Diphu Civil Hospital for medical examination. At the time of occurrence. the victim was 10 years old.
- 10. PW-4 is Smti. Rejina Lagun who knows the informant, victim and accused person. The incident took place on 5<sup>th</sup> day of this year. She forgot the month of the occurrence. She herself did not see the occurrence. As informed by one Sanjoy Kathar, the accused pulled the victim to a jungle and when he tried to commit "Beya Kam" (illegal physical contact)

she screamed and hearing her scream, Sanjoy Kathar went inside the jungle and rescued her from the clutches of the accused. The village people assembled there and they apprehended the accused person. At the time of occurrence, victim attained the age of 10 years.

11. PW-5 is Shri Sanjoy Kathar who is one of the most vital witnesses in this case. He has deposed in his evidence that he knows the informant, accused and the victim. The incident occurred on 5.02.2018 at about 3-30 PM. On the day of occurrence, he went to attend a marriage party and on his return along with his wife and one another woman, he heard crying of a girl from the direction of jungle of Karbi Cremation Ground. Hearing her weeping, he went inside the jungle and started searching as to who was weeping. At that time, a minor girl came running towards him and catching his foots insisted him to save her. On being asked, she told that a person whom she called "Keka" brought him to the jungle. Then he took the girl to the road and then the girl again told that said Keka wanted to do "Beya Kam" (illegal physical contact) with her, but as she raised hue and cry he could not do it. At that time, a person by name Premchand Tamang came out of the jungle taking a dao on his hand and asked him to hand over the girl to him (Premchand). Then the victim girl pointed out that this person tried to commit "Beya Kam" and then he (PW-5) came to know that Premchand Tamang brought the girl for the purpose of doing "Beya Kam". Thereafter, he told the girl to go to her house, but she in fear did not want to go to her house. In such a situation, he

sent his brother, Kenchand Kathar to inform the matter to her house and to the Gaonburah. At about 7-30 PM, the grandfather of the victim and Gaonburah came to him and he handed over the girl to them. Then the informant, Jonga Thapa lodged an ejahar at Dillai Police Station. While the accused came out of the jungle, they confined him and handed him over to Gaonburah along with Gaonburah.

- 12. PW-6 is Shri Lukas Kandula deposed that he knows the informant, accused and the victim. The incident took place 05.02.2018. On the day of occurrence, he was in the house of the Gaonburah. While the fact of the occurrence was reported to Gaonburah, he could learn the same. Gaonburah went to the place of occurrence. At 10 PM the Gaonburah arrived at his house along with family members of the victim. Then the Gaonbura informed him that the accused has already been handed over to police. On being asked as to what happened, the victim told that the accused took her to jungle and tried to rape her. As she made hue and cry, the accused fled away. At the time of occurrence, victim was 10 years old. Thereafter, victim and her family members went to their house.
- 13. PW-7 is Shri Megharaj Thapa who has testified that informant is his brother. He knows the accused. Victim is his daughter. The incident occurred on 05.10.2018. At the time of occurrence, he went towards the hill for doing labour work. After six days of the occurrence, he came to know about

the occurrence and rushed to his house. On asking, the victim informed him that on the day of occurrence, the accused forcefully took her to a nearby jungle and forcefully tried to commit rape on her. Then she started weeping and hearing her weeping, Shri Sanjoy Kathar, who was going along the road by the side of the jungle, rescued her. Later, he came to know from the Gaonburah that the police arrested the accused person.

14. PW-8 is Miss Sunita Thapa is the alleged victim of this case. She testified in her deposition that she knows the accused, Shri Premchand Tamag. Accused belongs to their village and he is their neighbour. On the day of occurrence at about 3 PM, the accused came to their house and he proposed her to go out, but she refused to his proposal. At that time, her grandmother was alone at the house. On being shown intimidation, she went with the accused person. He took her to a jungle which is 3 KM away from her house. She went there on foot. In the jungle he wanted to assault by a dao and then the accused by holding her hands tried to lay her down on the ground. Then she started crying and at that time, one Sanjoy Kathar arrived there. Seeing him, the accused fled away towards the jungle. Sanjoy Kathar took her to his house. Thereafter, she along with Gaonbura came to her house. Doctor examined her. Police got her statement recorded in the Court. Ext.2 is her statement and Ext.2(1) and 2(2) are her signatures.

- her evidence that on 05.02.2018 while she was working as SDMO at Diphu Civil Hospital, on that day she examined Smti. Sunita Thapa aged 9 years in connection with Dillai PS Case No.03/2018. On her examination, she found no marks of injury on her body. She did not find mark of injury on the genital part of the victim. She did not examine vaginal part as there was no sign of sexual intercourse. As per X-ray report, age of the victim girl is below 18 years, around 8-9 years. Ext.2 is the medical report and Ext.2(1) is her signature.
- 16. PW-10 is Shri Haren Hazarika who is the of this case. His evidence shows investigated the case from beginning to ending. During his investigation, he drew the sketch map, arrested the accused person and forwarded him to Court. He sent the victim to Diphu Civil Hospital for medical examination and brought her to the Court for recording her statement in the Court. Later he collected the medical report. He seized the birth certificate of the victim. Ext.1 is ejahar and Ext.1(2) is his signature. Ext.4 is the sketch map and Ext.4(1) is his signature. He also seized one document proving date of birth of vide Ext-5 and Ext-5(1) is his signature. On completion of the investigation, he submitted the charge-sheet U/S 376/511 of IPC and Sec.8 of the POCSO Act. Ext.6 is the charge-sheet and Ex.6(1) is his signature.
- **17.** First of all I would like to start discussion regarding age of the victim. Punishable provisions of

the POCSO Act will be attracted if the victim is below 18 years. Ext-1 is the FIR which was lodged by the paternal uncle of the victim where in he has stated that at the time of occurrence the victim was 10 years old. PW-2 is the co-villager of the informant who has stated in his evidence that at the time of the occurrence the victim was 10 years old. PW-9 is the medical officer who examined the victim has stated in evidence that on examination of the victim, he found her to be around 8/9 years old. The defence has not disputed the medical evidence and Ext-3 which were related to age of victim when the occurrence took place. Ext-5 is the seizure list by which a Student's Profile in the name of Sanita Thapa was seized. It appears from the said sized Profile that at the time of occurrence the victim did not complete 10 years. PW-3 is the mother of the victim who has stated in her evidence that at the time of occurrence the victim was 10 years old. From the discussion it reveals that there is corroborated evidence on record showing that at the time of occurrence the victim was 13 years old. Accordingly I am convinced to hold that at the time of occurrence the victim was child as defined under section 2(d) of the POCSO Act.

that the accused to her to a jungle which is about 3 KM away from the house forcibly on foot. The defence has not disputed the fact that the accused took away the victim from their house. There is no evidence brought by the defence showing that the victim was taken by the accused with permission her legal guardian.

- **19**. The victim has stated in her evidence that taking to the jungle the accused intended to fell her down on the ground by holding her hands. While she started crying, one Sanjoy Kathar came there. Seeing Sanjoy Kathar, the accused fled away. PW-5 has stated in his evidence that while on the day of occurrence at 3-30 PM he was coming home back with his wife and another lady after attending marriage party, he heard crying of a girl in the jungle near cremation ground. Thereafter while he was proceeding towards the jungle, a girl came to him running and by touching his feet she requested him to rescue her. On being asked, she told him that she was taken here by a person of their village whom she called "Keka". She further informed her that the accused tried to do foul work with her, he failed to do so as she raised hue and cry. As the victim declined to go to their house, he sent his elder brother to inform Gaonbura and family members of the victim. On the same day at 7-30 the Gaonbura and grandfather came to his house. He handed over the victim to them. The accused was also apprehended while he came from the jungle by the villagers. The accused was also handed to the Gaonbura.
- with victim family coming to his house back at 10 PM. He has further stated that the Gaonbura told him that he already had handed the accused police. PW-7 is the mother of the victim who has stated in her evidence that the accused took her to the jungle forcibly and that he tried to rape her. PW-4 is the hearsay witness. She was informed by Sanjoy Kath that he rescued the accused. PW-7 is the father of

the victim girl who on the following day came to the house and on being asked the victim told him that the accused tried to rape her forcibly. She has also informed him that one Sanjay Kathar rescued her and took her to his house.

- recorded under section 164 of the CrPC which reveals that the accused is their neighbourer and that he took her with him while he went out in search of house. It also appears that while she and accused person were inside the Jungle the accused person felled her on the ground by holding of her legs and hands. She raised "hulla" saying "maa maa". It also shows that one Karbi People rescued the victim and took her to his house. PW-10 is the investigating officer whose evidence shows that while he visited the PO he found the accused person being kept in the house of the victim after apprehending by the local people.
- 22. From the discussions made above it reveals clearly that there is a doubt that the accused made any attempt to do penetrative sexual assault towards the victim child. However the prosecution has succeeded in establishing its case under section 363 IPC.

#### **ORDER**

- 23. In the result I find the accused person guilty under section 363 IPC and accordingly he is convicted.
- **24.** On the point of sentence the accused person is heard and to that effect his statement is recorded. It appears from statement of the accused

person he is the only earning member of his family consisting of 5 members. He has also prayed for leniency in sentencing him. It has been submitted by the learned lawyer appearing on behalf of the accused person that it is a fit case where the accused needs to be punished leniently. The learned public prosecutor has conceded the aforesaid submissions made by the learned defence counsel above. There is no evidence on record showing that the accused person was earlier convicted by the court of law. Taking nature of the case as well as financial condition of the accused person I find substance in the submission of the learned lawyer appearing on behalf of the accused person.

- 25. Taking all aspects into consideration I do hereby order the accused person to suffer RI of 6 months. Set off his earlier detention period. Let a certified copy of the Judgment be supplied to the accused person at free of cost. Let the seized articles be sent to the informant back. Accordingly this cased is disposed of on contest.
- **26.** Given under my hand and seal of the Court on this 10<sup>th</sup> October, 2018 at Diphu, Karbi Anglong.

Dictated and Corrected by me

(Md. A.U.Ahmed, AJS)
Special Judge

(Md. A.U.Ahmed, AJS )
Special Judge