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

Present : Md. A.U. Ahmed, AJS,

Special Judge, Karbi Anglong, Diphu.

**POCSO Case No. 14/2015** corresponding to GR Case No. 901/2015 & Bokajan Police Station Case No. 180/2015 Under Sections 354(B) of

the IPC/8 of POCSO Act.

State of Assam

Versus

Md Abdul Kadir

### Name of informant/complainant:

Shri Rongsar Bey

S/O Late Mojasing Bey

Village: Bormanthi

PS: Bokajan

District: Karbi Anglong

#### Name of the accused person facing trial:

Md Abdul Kadir

S/O Md Mamtaz Ali

Village: Rongkimi Natun Basti

PS: Bokajan

District: Karbi Anglong

#### Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor.

For the defence : Mr J. Paul.

Argument heard on : 30.07.2019.

Judgment pronounced & delivered on: 08.08.2019.

# **JUDGMENT**

- It is a case of attempt to commit offence covered by the Sec.4 of the POCSO Act alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 02.10.2015, the informant-Shri Rongsar Bey lodged an ejahar with the O/C of Bokajan Police Station stating inter alia that on the same day at about 7:30 PM, the accused called his niece, Smti. Sumi Rongpharpi over phone and lured her away with ill intent towards Sukanjn Forest Office and outraged her modesty by scuffling with her. At that time, local people witnessed the occurrence and apprehended the accused. Thereafter, they handed him over to the police station On receipt of the ejahar, O/C Bokajan Police Station registered a case vide its PS case No.180/2015 under section 354 (B) of IPC R/W Sec. 8 of the POCSO Act. On completion of investigation, I.O. submitted the charge-sheet under the registered sections of law against the accused person. Hence the prosecution has come.
- 3. On completion of appearance of the accused person, copy was furnished to him. After perusal of the case record along with case diary and hearing learned lawyers of both sides, I found sufficient grounds for presuming that the accused person attempted to commit the offence under section 18 of the POCSO Act R/W Section 4 of the same act. Accordingly, the charge was framed against him. The particular of the charged offence was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

 During trial prosecution has examined as many as six witnesses. Statement of the accused person was recorded under section 313 of Cr.P.C. Defence declined to adduce evidence. Plea of defence is of total denial.

# 5. **Point for determination is:**

Whether the accused person on 02.10.2015 at about 7:30 PM at the jungle of Bormanthi village under Bokajan PS attempted to commit offence covered by the section 4 of the POCSO Act upon Smti Sumi Rongpharpi aged 12 years and thereby committed an offence and that he thereby committed an offence punishable under section 18 of the POCSO Act read with section 4 of the said Act.

#### 6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove the case against the accused person. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

7. PW-1 is Shri Rongsar Bey who has stated in his evidence that he is the informant of this case. He knows the accused person as well as the victim girl. The occurrence

took place in the year 2015. On the day of occurrence at about 6:30 PM, the villagers apprehended the accused and brought him to their house because his uncle-Shri Barsing Bey was the Govt. Gaonburah at that time. He was present at home at that time. According to the version of the villagers, when the accused tried to pull the hand of the victim they saw and apprehended him. Thereafter, they produced the accused before the Govt. Gaonbura, i.e. his uncle to decide the matter alleged by the villagers. In this regard, police was informed and accordingly, police came and took the accused and the victim to the police station. Then, he lodged the ejahar at Bokajan Police Station. Ext.1 is the ejahar and Ext.1(1) is his signature. The victim is his relative. At that time, the victim was 12/13 years old. Police got the victim examined in the hospital and her statement recorded in the Court.

8. PW-2 is Shri Nabin Tisso who has deposed in his evidence that he knows the informant, the accused and the victim. The incident took place in the year 2015. On the day of occurrence at about 6:30 PM while he was coming out of his house, he saw some people taking the accused to the house of Govt. Gaonburah. On being asked, the people told him that the accused pulled the victim by catching her hand and seeing the said scene, the villagers apprehended the accused and brought him to the house of the Govt. Gaonburah. The Gaonburah told him that he would have to be the witness in this case. Later on, police came to the house of the Gaonburah and took the accused to the police station. At that time, the victim was 12/13 years old and the police also took her to the police station.

- 9. PW-3 is Shri Jana Bey who has deposed in the deposition that he knows the informant, the victim and the accused person. He himself did not see the occurrence. On the night of occurrence, he went to the house of the Govt. Gaonburah. At that time, the accused was found being tied by the villagers at the house of the Gaonburah. He came to know from the people gathered there that while the accused was scuffling with the victim by catching her body, the villagers apprehended him and took him to the house of the Gaonburah. He did not ask the victim about the occurrence.
- 10. PW-4 is Md Rajib Ali who has stated in his evidence that he does not know the informant and he saw the accused for the first time at the house of the Gaonburha. The incident took place in the year 2015. On the day of occurrence at about 3:30 PM while he and his friend, Md Imanul Hussain were going along the road on foot, some villagers met them and proposed to go to the house of the Gaonburah. On reaching there, he saw the accused being tied. While he asked the Gaonburah about the reason of apprehending the accused, he was informed that the accused was caught in connection with an offence relating to girl. Then he left the place.
- 11. PW-5 is Dr Karik Kropi who testified in her deposition that on 03.10.2015 when she was attached with Diphu civil Hospital as Sr. M & H.O., she examined Smti. Sumi Rongpharpi in connection with Bokajan PS Case No. 180/2015 and found no external mark of injury on her body. On her genital part also, she found no injury mark. Hymen of the victim was intact. As per X-ray report, the victim was below 18 years. Sexual involvement was also absent. Ext.2 is the medical report and Ext.2(1) is his signature.

- 12. PW-6 is Md Enamul Ahmed who stated that he did not know the informant, but knows the accused person. He does not know about the scuffling done by the accused with the victim for his ill motive. He had undergone an operation on his head on 18<sup>th</sup> September and thereafter, he forgot the happenings of the past.
- 13. According to PW-1 and PW-2, at the time of the occurrence the victim was 12-13 years old. PW-5 is the medical officer on 03-10-2015 who has stated that the victim was below 18 years. The accused is entitled to benefit of principle of margin error of two years in upper limit. In the instant case upper limit is 18 years. Hence there is doubt that at the time of the occurrence the victim was a child.
- 14. In the instant case the victim is the most vital witness. The evidence record does not show that any one saw the occurrence. According to PW-6, he did not know anything about the occurrence. Similarly the evidence of PW-4 is silent that he saw the occurrence. From the evidence of PW-1 to PW-3 it appears that they came to know that the accused had pulled the victim by holding of her hand.
- 15. The prosecution could not examine the victim as her where about could not be traced out. Hear say evidence is a weak piece of evidence. Hence in my considered opinion that non-examination of the victim is fatal to the prosecution.

# **ORDER**

16. In the result I find that the prosecution has failed to prove its case against the accused person Md. Abdul Kadir

beyond all reasonable doubts. Hence on benefit of doubt the accused Md. Abdul Kadir is hereby acquitted from the charges brought against him and let him be set at liberty forthwith. The bail bond shall be stood cancelled after 6 (six) months.

- 17. Accordingly this case is disposed of on contest.
- 18. Given under hand and seal of this court today, the 8<sup>th</sup> day of August, 2019.

Dictated and corrected by me.

Special Judge, Karbi Anglong, Diphu. Special Judge, Karbi Anglong, Diphu.