## IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

### Spl. POCSO Case No. 05/2014 u/s 376 IPC r/w Sec. 4 of POCSO Act, 2012



State of Assam

-VS-

Sri Tankeswar Saikia

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

# Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P. For the defence : Mr. T. Baruah, learned Advocate.

Dates of recording Evidence: 25.09.2017, 27.02.2018, 25.04.2018, 04.07.2018.

Date of Argument

: 04.07.2018.

Date of Judgment

: 04.07.2018.

#### JUDGMENT

- 1. The prosecution case in brief is that on 01.07.2014 the informant, Losu Kishan lodged an FIR with the O/C Biswanath Chariali PS stating inter-alia that on 29.06.2014 at about 4 p.m. when his 5 year old daughter (name is withheld) went to the compound of the accused Tankeswar Saikia for picking mangoes, the accused pulled her inside his house and by closing the door and gagging her mouth, he committed rape on her and thereby caused grievous injuries on her urethral opening. He stated that he had given 'bichar' to the Gaonburah and the villagers but as the accused did not appear, as advised, he filed the FIR.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet u/s 376(2) (i) IPC read with Section 4/5(g) POCSO Act, 2012. The accused in due course appeared before this Court for trial. The copies of the relevant documents were furnished to him. As the accused expressed his inability to engage a counsel of his choice to defend him, Sri T. Baruah, learned Advocate was appointed from the panel of Legal Aid Counsel to defend the accused at the expense of the State. Upon hearing both the sides on the point of charge, taking note of the materials u/s 173 CrPC as my learned predecessor found grounds for

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- presuming that the accused has committed offences u/s 376 IPC, r/w Section 4 of POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, he pleaded not guilty.
- 3. During trial, the prosecution examined six witnesses in all. Looking into the evidence as adduced by these witnesses including the informant, PW1 and taking note of the medical examination report of the alleged victim, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Looking into the materials on record and the medical examination report of the alleged victim, the prosecution evidence was closed. The accused was thereafter examined u/s 313 CrPC, his plea was total denial. He refused to any evidence on his behalf. The case was thereafter, argued by both the sides.



### Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim?

# Discussion, Decision and Reasons thereof

- 4. PW 1 is the informant, Losu Kishan. He stated that about three years back, on a day at about 6 P.M. his wife told him that the accused took the victim took his house at about 4 p.m. and committed rape on her. Hearing the same, he went to the police station along with his daughter and filed the FIR, which he proved it as Ext. 1. According to him, the age of his daughter about 5 years at that relevant time. The police got his daughter medically examined. In his cross-examination he stated that on the next day of the occurrence he called one meeting where the Gaonburah and about 20-25 persons were present. He stated that at the time of the occurrence he was at bazaar.
- 5. Thus, from the evidence of PW 1, it appears that he lodged the FIR on the next day of the occurrence after he had heard about the same from his wife. But the Ext. 1 on the other states that the incident took place on 29.06.2014 and the FIR was lodged on 01.07.2014. His evidence does not disclose that either he or his wife had examined his daughter physically to find out the truth.
- 6. PW 2 is Basanta Kalita. He stated that he was not present on the day of the said occurrence. Returning back to home in the evening at about 8 p.m., he saw the accused and the informant having verbal arguments. He stated that they had quarrel over missing of coins from the house of the accused. The accused suspected that the daughter of the informant- the alleged victim had stolen the same. He then asked both of them not to quarrel. A meeting of the next day on the said topic took place wherein nothing materialised for which this case was filed. The evidence of PW 2 is in total

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contradiction with the prosecution case.

- 7. PW 3 Saitendra Prasanna Saikia stated that the accused is his elder brother. About 2-3 years back the money the acused kept under the table of his house went missing and the same was taken by the victim in order to buy snacks. He stated that for the said reason the accused chased the victim girl in order to beat her and while running the victim sustained injuries on her private part by falling. He stated that the informant out of the small matter lodged the FIR against the accused. In his cross-examination he stated that he did not witness the injuries sustained by the victim. PW3 too therefore did not support the prosecution case.
- 8. PW 4 Arun Khaund is the VDP Secretary. He stated that one day in the year 2014 he was informed by the PW1 that his 10 year old daughter- not of 5 years as stated in the Ext.1- told him that when she try to urinate, she cried for which the informant took her to a doctor. He stated that those days were the days of mangoes and the accused lured the victim to his house in order to give her mango. According to him, the victim told her mother that the accused had committed 'bad work' with her. In his cross-examination he stated that the informant told him about the incident verbally. He denied to the suggestion that he did not state before police during investigation of the case anything which he had deposed before the court.
- 9. PW 5 Bhabani Upadhyaya stated that he was informed by the PW1 that his daughter sufferred from burning sensation as soon as she tried to urinate. He stated that the informant did not tell him as to why the daughter of the informant experienced burning sensation while urinating. He could not say as to why the case was lodged by the informant. According to him, the police did not interrogate him during the investigation of the case. PW 6, Dulal Saikia stated that one night the informant had came to his house and told that the accused took his daughter to his house by giving her mango and then committed 'beya kam' with her. PW 6 then advised him not to quarrel with the
- Addl. Sessions Judge 10. As we scrutinise the evidence of the witnesses as examined by the prosecution, we find that PW 4 and PW 5 stated that the informant had told them that his designation and the experienced burning sensation while the characteristics. information given by him to the said witnesses. We have already noticed that PW 2 and PW 3 have totally deposed the contradiction with the prosecution case. PW4, PW5 and PW6 have no personal knowledge about the said occurrence. There is no eye witness to the said occurrence except the victim. But the Medical Examination Report as is available with the case record states that the alleged victim is a girl of 4 years. When we

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take judicial notice of the Medical Examination Report of the victim, we find that the doctor examining her found no injury mark on her body. The doctor did not find any redness around her introitus. Thus, the Medical Examination Report does not suggest of any penetrative sexual assault being committed on the alleged victim as alleged by the Ext. 1. Thus, from the evidence on record, I find that the prosecution has failed to prove its case. As such, I acquit the accused person from the offences charged against him and set him at liberty forthwith. His bail bond stands extended for a period of six months u/s 437-A CrPC as prayed for by him. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 4<sup>th</sup> day of July, 2018.

(D. BORA)

Additional Sessions Judge, FTC,
Biswanath Chariali, Sonitpur Assam.

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## <u>ANNEXURE</u>

Witnesses examined by the Prosecution:

PW1- Sri Losu Kishan

PW2- Sri Basanta Kalita

PW3- Sri Satyendra Prasanna Saikia

PW4- Sri Arun Khound

PW5- Sri Bhabani Upadhyaya

PW6- Sri Dulal Saikia



Exhibit-1: FIR

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addl. Sessions Judge Biswanath Cheriali, Sonitpur