## **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.02/2017

U/S- 4/8 of the POCSO Act, 2012

State of Assam

-Versus-

Sri Udhab pathak

s/o-Lt. Moharat Pathak

resident of vill -Tarigaon

P.S.-Chhaygaon

Dist.-Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor ------for the State

Mr. Jeherul Islam, Ld. Advocate

-----for the accused

Date of evidence:18.04.2018, 04.02.2019, 04.04.2019 and 11.07.2019.

Date of Argument: 07.08.2019

Date of Judgment: 03.09.2019

## **JUDGMENT**

- 1. The Prosecution case in brief is that—07.06.2016 the complainant—Sri Mantu Richi lodged an ejahar stating that on 01.06.2016 the accused person—Udhab Pathak committed sexual assault upon the minor daughter of the informant. On date day at about 1.30 p.m. while the minor daughter of the informant along with her friend was returning from school, then on the way to home they met the accused person calling them to his house and by giving them mangoes, he tried to commit rape on the minor daughter of the informant. Hence, this case.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 229/2016 U/S- 4/8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4/8 of the POCSO Act, 2012.
- 3. The case was duly committed and the Court after hearing both the parties, framed charges U/S- 4/8 of the POCSO Act, 2012 against accused—Udhab Pathak. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as five (5) numbers of witnesses including the informant, the victim girls and I/O. Statement of the accused person U/S-313 Cr. P.C is recorded. He has denied committing the offence and declined to adduce evidence.

## 5. POINT FOR DETERMINATION:

- (I) Whether the accused person on or about 01.06.2016 at about 1.30 p.m, at village Tarigaon under Chhaygaon P.S committed sexual intercourse on the minor daughter of the informant, and thereby committed an offence punishable U/S 4 of the POCSO Act, 2012?
- (II) Whether on the same date, time and place the accused committed sexual assault the daughter of one Jagat Rishi, and

thereby, committed an offence punishable U/S 8 of the POCSO Act, 2012 ?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. In this instant case, the accused is charged U/S-4/8 of POCSO Act. Let us go through the evidence on record to find out if the prosecution has succeeded to prove the case.
- P.W.1, prosecutrix no.1. She has deposed in her evidence that she knows the accused, who is their neighbour and the incident took place under a mango tree belonging to the accused, when she along with her friend (prosecutrix no.2) were returning from school. She alleged that the accused person took her on his lap and removed her pant. He also removed the frock of prosecutrix no.2. Thereafter, when P.W.1 shouted, her younger sister—Smti. Ruma came there and she informed the incident to her mother. Then they went to their houses and the accused left the scene. Police came and sent her for medical examination and brought her before the Magistrate for recording her statement. Police also recorded her statement.
- 8. In her cross-examination, P.W.1 denied all the suggestions made to her by the defence side. She stated that she do not know whether any case has been lodged by the accused against her father.
- 9. P.W.2, Mantu Rishi, is the informant of this case. He knows the accused person. He deposed that the incident took place about 2 years ago at day time around 2 p.m. Prosecutrix no.1 is his daughter. At that time, she was studying in class-II and was 8 years old. P.W.2 also deposed that after six days of the occurrence, he heard from one village lady that on the date of occurrence while his daughter (prosecutrix no.1) along with the 6 years old daughter of one Jagat Rishi were returning from school on foot, then the accused met them and he caught hold of prosecutrix no.1 and opened her panty. Then, prosecutrix no.1 shouted out and freed herself from the hands of the accused. P.W.2 further testified that the accused caught hold of the minor daughter (prosecutrix no.2) of Jagat Rishi and took her on his lap and opened her panty also. This witness disclosed that the incident was witnessed by the village lady, who informed him. Then P.W.1 informed the Village Headman and other villagers and called for a village meeting.

The accused also attend the meeting, where he admitted to have committed the offence of sexual assault. Thereafter, P.W.1 lodged the ejahar.

In his cross-examination, P.W.2 disclosed that he did not know the exact date of occurrence. He also did not know the name of the village lady, from whom he heard about the incident but she was the neighbour of the accused. P.W.2 did not take prosecutrix no.1 for medical examination after the incident till the date of his knowledge about it. He further disclosed that the accused did not confess in writing in the village meeting.

10. P.W.3, Jagat Rishi knows the informant and also the accused person. He deposed that the incident took place about 2 years ago in the afternoon. Prosecutrix no.2 is his daughter. At that time, she was 6 years old and prosecutrix no.1 was 8 years old. P.W.2 further deposed that he met his daughter (prosecutrix no.2) in the evening at home. She told him that while she and prosecutrix no.1 were returning from school, then the accused met them and he called them to his courtyard. Prosecutrix no.2 also told P.W.3 that the accused opened her panty and also the panty of prosecutrix no.1 and tried to rape them. This witness stated that prosecutrix no.1 also told P.W.3 about the incident. Thereafter, village mel was held. The accused also attend the meeting, where he admitted to have committed the offence of sexual assault. Thereafter, P.W.1 lodged the ejahar.

In his cross-examination, P.W.3 disclosed that his daughter (prosecutrix no.2) had told the incident to her mother also. He enquired about the incident from prosecutrix no.1 on the next day, who is their neighbour. P.W.3 discussed about the incident with the informant on the next day and till then, he did not lodge any ejahar. They did not take the victims for medical examination. They both gave a written information about the incident before the village mel. There was no written document regarding the confessional statement of the accused in the village mel. The villagers informed the police about the incident when the accused confessed committing the offence.

11. P.W.4, prosecutrix no.2 knows the informant of this case. She also knows the accused person—Udhab Pathak. Prosecutrix no.2 deposed that the incident took place about 3 months ago at about 2.00 p.m. She was studying in class-II at the time of occurrence. At the relevant time, she was coming home from school with her friend—

prosecutrix no.1, who is the informant of this case. On the way they stopped under a tree. Then, the accused came from his house and he called her and prosecutrix no.1 to his house to give them mangoes from his tree. They went with him near the mango tree. But the accused did not give them mango instead he opened her panty. When prosecutrix no.2 told him that she will tell the incident to her mother, then, he did not give her mangoes and he send her away. Prosecutrix no.2 came and sat under the tree. Later, prosecutrix no.1 also came near her and she told her that the accused opened her panty also. Thereafter, she told the incident to prosecutrix no.1's father and to her mother. Then, prosecutrix no.1's father gave the case. Police recorded her statement. Police brought her before the Magistrate for recording her statement.

In her cross-examination, P.W.4 disclosed that accused first came and called prosecutrix no.1 to the backyard of his house near the mango tree to give her the mangoes. She was waiting under a tree, then he again came and called her near the mango tree to take the mangoes. Prosecutrix no.2 did not see the accused opening the panty of prosecutrix no.1. She told her the incident. Prosecutrix no.1 was not present near her when the accused opened her panty. She was alone with the accused person at the time of incident. She told the incident to her parents immediately after the incident. They did not shout at the time of incident and did not tell the neighbours of accused about the incident.

12. P.W.5, S/I, Manoj Phukan, is the I/O of this case, who has investigated the case. In his deposition, he has stated that on 07.06.2016, he was working as Attached Officer at Chhaygaon P.S. On that day the informant—Mantu Rishi lodged an ejahar in Chhaygaon P.S. Thereafter O/C, Chhaygaon P.S registered a case bearing Chhaygaon P.S Case No.229/2016 U/S- 8 of POCSO Act, 2012 and directed him to investigate the case. Accordingly, he visited the place of occurrence along with the staffs on that very day. He recorded the statements of the witnesses including the informant and the victims. He prepared the sketch map. He brought the accused—Udhab Pathak to the police station for enquiry. Thereafter, he was arrested and forwarded him to the Court. P.W.5 sent the victims for medical examination but they refused to do. P.W.5 sent the victims to the court for recording their statements U/S-164 Cr. P.C. Thereafter, P.W.5 completed the investigation and submitted the case diary to the O/C, Chhaygaon P.S as he was transferred to Boko P.S. Thereafter, Second Officer, Chhaygaon P.S, S/I, Kapil Pathak submitted charge-sheet against the accused person U/S-4/ 8 of POCSO Act. Ext.1 is the

sketch-map and Ext.1 (1) is his signature. Ext.2 is the charge-sheet and Ext.2 (1) is signature of S/I Kapil Pathak, which is known to him.

In his cross-examination, P.W.5 disclosed that P.W.1 did not state before him about the appearance of Smti. Ruma at the place of occurrence. P.W.1 did not state before him about the removal of the frock of the prosecutrix No.2 by the accused person. The house of the accused is located near the road and the place of occurrence is the back side of the house.

- 13. Perused the evidences on record. Heard the Learned Counsels for both sides. Learned Counsel for the accused submitted that there has been considerable delay in lodging the ejahar, which raises a considerable doubt regarding the prosecution story. He further argued that the evidences of the P.Ws are very much contradictory and that the accused, who is a 75 years old man has been falsely implicated in the case. The material witness has not been examined by the prosecution side. On the other hand, learned Additional Public Prosecutor has argued that prosecution succeeded to prove the case against the accused.
- 14. In this instant case, it has comes out from the evidnces on record that the prosecutrix No.1 and prosecutrix no. 2 are minors. They adduced evidences as P.W.1 and P.W.4 respectively that on the date of occurrence, while they both were returning home from school, the accused called them to take mangoes. But he did not give them mangoes. They have alleged that the accused opened their panty. Now, the version of P.W.1 is that the accused took her on his lap and removed her pant and he removed the frock of prosecutrix No.2. As P.W.1 shouted, her younger sister—Smti Ruma came and she informed the incident to her mother. Thereafter, she came home. But in her statement U/S-164 Cr. P.C made before the Magistrate, P.W.1 alleged that the accused opened her panty and he inserted his penis inside her vagina due to which, she had pain and started bleeding. She also stated that the wife of one—Garijal saw them and she raised hue and cry, then the accused left her and fled away. Again in her statement before the I/O recorded U/S161 Cr. P.C. So, the evidences of P.W.1 is found to be very much contradictory. Furthermore, P.W.1 stated before the court that the incident was witnessed by her younger sister—Ruma but the prosecution side failed to examine her. But I/O confirmed that P.W.1 did not tell him about the appearance of Ruma at the spot.

In her statement U/S-164 Cr. P.C, P.W.1 stated that wife of one Gariyal saw the incident. Here, also there is contradiction regarding the eye-witness to the incident. Allegation of P.W.4 is that the accused called them to take the mangoes but he did not give the mangoes. Instead, he opened their panty. P.W.4 did not support the evidence of P.W.1 that some body saw the incident. So, there are major contradictions in evidence of both the prosecutrix.

- Again, according to P.W.1, her sister—Ruma came in the spot and she told the incident to their mothers. P.W.2, father of the prosecutrix No.1 (P.W.2) disclosed that he heard about the incident after 6 (six) days of occurrence from one village lady, who saw the incident but he does not know her name. Thereafter, village meeting was called for and accused admitted committing sexual assault on P.W.1 and P.W.4. Now, P.W.3, father of prosecutrix no.2 stated that on the evening of the occurrence, his daughter told him that the accused called her and prosecutrix no.1 to his courtyard and opened their panty and tried to rape her. Thereafter, village mel was held and the accused admitted committing the offence. But, none of the village people have been examined in this regard. It is in the evidence of P.W.4 (prosecutrix no.2) that she told the incident to the father of prosecutirx no.1 and to her own mother. She revealed that they did not shout at the time of incident.
- 16. Perusal of the FIR reveals that the incident took place on 01.06.2016 while the FIR was lodged on 07.06.2016. There has been considerable delay in lodging the ejahar, which remained unexplained, and this creates a doubt on the prosecution story. Delay is fatal to the prosecution. Therefore, in the midst of such contradiction, it is not found safe to rely upon the evidences of the prosecutrix no.1 and 2. Their evidences are not found trustworthy and does not inspire confidence at all.
- 17. Coming to Section 4 of the POCSO Act which deals with offence of penetrative sexual assault and Section 8 of this Act, which deals with the offence of sexual assault, it is clear from the evidences on record that no such offence had taken place with the prosecutrix No.1 and 2. So, Section 4/8 of POCSO Act at all not attracted in this case. In the midst of such contradiction, the accused is entitled to get the benefit of doubt.
- 18. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Udhab Pathak is

held not guilty. He is acquitted of the offence U/S- 4/8 of the POCSO Act, 2012 and set at liberty forthwith.
19. His bail bonds shall remain in force for next 6 (six) months U/S-437 (A) Cr. P.C.
20. The case is disposed of.
The Judgment is pronounced in open Court and written on separate sheets.
Given under my hand and seal of this Court on this 03 <sup>rd</sup> day of September, 2019.
Special Judge,
Dictated and corrected by me
Special Judge,

Kamrup, Amingaon

# **APPENDIX**

# **Prosecution Witness:**

P.W.1, prosecutrix no.1

P.W.2, Mantu Rishi

P.W.3, Jagat Rishi

P.W.4, prosecutrix no.2

P.W.5, S/I, Manoj Phukan,

# **Prosecution Exhibit**

Ext.1 is the sketch-map

Ext.2 is the charge-sheet

Special Judge, Kamrup, Amingaon