CAUSE TITLE POCSO Case No. 18/17

Informant: Smt. Juli Das,

W/o- Sri Purna Das,

R/o- Udaipur, Hiralal Das Path,

PS- Dibrugarh, District- Dibrugarh.

Accused: Sri Rahul Das,

S/o- Sri Babul Das,

R/o- Udaipur, Hiralal Das Path,

PS- Dibrugarh, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Mr. S Seal, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smt. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 18/17 G.R. Case No. 926/16

> > State of Assam

-Vs-

Sri Rahul Das

Charges: Under Sections 325 IPC, read with Section 8 of POCSO Act.

Date of evidence on : 07-05-18. Date of argument : 31-10-18. Date of Judgment : 31-10-18.

JUDGMENT

- 1) The prosecution case in a nutshell is that when Smt. Juli Das (hereinafter the informant) returned home from the Court at about 4:30 pm, she was informed by her mother Smt. Bulu Das that Sri Rahul Das (hereinafter the accused) trespassed into their house and forcefully took 'X' into the bathroom by dragging her and gagged her mouth. When 'X' raised alarm, Bulu Das went to her rescue and noticed that the accused has confined her inside the bathroom. When Bulu Das rebuked the accused and confronted him, the accused assaulted Bulu Das and this resulted in back ache of Bulu Das who was bed ridden.
- 2) It is pertinent to mention that the informant is an Advocate. She lodged an ejahar and Milan Nagar OP GDE No. 180 dtd. 11-04-16 was registered and the FIR was forwarded to the Dibrugarh Police Station which was registered as Dibrugarh PS Case No. 279/16 under Sections 448/342/352 of the Indian Penal Code (IPC for short).

- 3) The investigating officer (IO in short) embarked upon the investigation. He went to the place of occurrence and prepared the Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, he submitted Charge-Sheet against the accused under Sections 448/323 IPC, read with Section 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).
- 4) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Sections 325 IPC, read with Section 8 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 5) To substantiate the stance, the prosecution adduced the evidence of one witness. During the course of the trial, the prosecution who was afforded ample of opportunities, failed to produce the victim 'X' and the other victim Smt. Bulu Das was reluctant to appear as witness in this case. A petition was filed by the informant that the other victim Bulu Das was her mother and was lying bedridden and she was not in a position to appear as witness in this Court. It appears that further steps to issue summons to witness 'X' was a futile attempt and to examine Bulu Das on commission will also bear no fruit.
- 6) The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (CrPC for short).
- 7) I have heard the arguments for both the sides. The learned Public Prosecutor Smt. Runumi Devi and the learned Addl. Public Prosecutor Mrs. Sahnaz Akhtar submitted that there is no evidence that the accused voluntarily caused grievous hurt upon the victim Bulu Das and there is no evidence that the accused sexually assaulted the other victim.

POINTS FOR DETERMINATION:

- 8) On the backdrop of the rival contentions urged at the bar, the following points are apposite to be taken up for proper adjudication of this case:
 - i. Whether the accused on 11-04-16, at about 4:30 pm, voluntarily caused grievous hurt on Bulu Das?
 - ii. Whether the accused committed sexual assault on the victim 'X'?

Decision thereon and the reasons for the decision:

- 9) The informant Smt. Juli Das testified as PW-1 that she lodged the ejahar Ext.

 1 wherein Ext. 1(1) is her signature. The incident occurred on 11-04-16, at about 4:30 pm and she received a phone call from her mother Bulu Das. She was on her way back home when she received a phone call from her mother and she immediately reached her maternal home and found that her mother was lying on the bed with severe pain and her mother informed her that the accused pulled the victim towards the toilet and when she tried to pretect the victim, the accused kicked her and she sustained injuries on her back. When she asked the victim 'X', the victim 'X' also informed her that the accused pulled her towards the toilet. Learning about the incident, she lodged the ejahar with the police.
- 10) After scrutinizing the evidence of PW-1, it is held that the accused did not cause grievous hurt upon Bulu Das, but the accused assaulted and used criminal force upon Bulu Das.
- 11) As the victim 'X' was not produced as a witness, the prosecution failed to prove that the accused committed sexual assault on the victim 'X'. There is no instance of medical treatment on any of the victims. There is no instance of medical treatment on the minor victim 'X' who is alleged to have been

sexually assaulted by the accused. The evidence of PW-1 also does not at all

depict that the victims were taken for medical treatment. It is clear from the

cross-examination that the minor victim 'X' was a domestic help in the

victim's maternal home. After carefully scrutinizing the evidence, it is held

that the evidence of PW-1 does not implicate that the accused voluntarily

caused grievous hurt upon her mother. It is also held that the victim was not

produced as a witness. The prosecution failed to prove that the victim was

sexually assaulted by the accused person. PW-1 who has admitted in her

cross-examination that the minor victim was a domestic help, also failed to

produce or give the victim's address to produce her as a witness in this case.

However, there is clinching evidence that the accused voluntarily caused hurt

upon the other victim Bulu Das.

12) Considering the age and antecedent of the accused, I believe that probation

to maintain peace and be of good conduct, will meet the ends of justice. The

accused is held guilty under Section 323 IPC and he is directed to maintain

peace and be of good conduct for three years from today and execute a bond

with such an undertaking.

13) Furnish free copies of judgment to the accused and to the District Magistrate.

Judgment is signed, sealed and delivered in the open Court on the 31st day of

October, 2018.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX POCSO Case No. 18/17

List of witnesses for prosecution:

1. PW-1 Smt. Juli Das.

List of exhibits for prosecution:

1. Ext. 1 Ejahar.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil.

List of exhibits for defence: Nil.

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.

Sessions Judge, Dibrugarh