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

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special Case No. 148 of 2018 corresponding to Bokajan Police Station Case No. 180 of 2017 Under Section 457 of IPC and 18 of the

POCSO Act.

State of Assam

Versus

Shri Krisna Das, Accused

Name of informant/complainant:

Sri parimal Panika

S/o Late Braza Nath Panika

Village: Kawram Bosti

P.S: Bokajan, District: Karbi Anglong.

Name of the accused person facing trial:

Shri Krisna Das

S/O Late Sarubabu Das Vill-Kawaram Basti

P.S: Bokajan

District: Karbi Anglong.

Advocates appeared:

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

For the defence : Mr Shymal Sheel.(Legal Aid

Counsel)

Argument heard on : 06.9.2018.

Judgment pronounced & delivered on: 07.9.2018/10-09-18

NB: The Judgment couldn't be delivered on the date as I was remained busy with some other urgent matter.

JUDGMENT

1. It is a case of lurking house trespass by night by entering into the dwelling house and attempt to commit

penetrative sexual assault alleged to have been committed by the accused person.

- 2. The prosecution case in brief is that on 13.3.2017 the informant named above lodged an ejahar with Bokajan Police Station stating inter alia that on 10.3.2017 at about 11-45 PM the accused committed lurking house trespass in his residence and tried to commit the offence of sexual abuse upon his daughter, Smti. Phulmoti Panika aged about 14 years.
- 3. On receipt of the ejahar, O/C, Bokajan Police Station registered a case vide its PS Case No.48/2017 U/S 457/376/511 of IPC R/W Sec.12 of POCSO Act. On completion of investigation of the case, the Investigating Police Officer submitted charge-sheet U/S 457/376/511 of IPC R/W Sec.12 of POCSO Act against the accused, Shri Krisna Das.

On completion of appearance of the accused person, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, this Court found sufficient grounds for presuming that the accused person had committed the offence U/S 457 of IPC and U/S 18 of the POCSO Act and accordingly, the charges were framed. The particulars of the charged offences were duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. During trial, Prosecution has examined as many as nine witnesses including complainant and the alleged victim of this case. Accused person has been examined U/S 313 of Cr.P.C. Defence examined none. Plea of defence is of total denial.

6. **Points for determination are:**

(i)Whether the accused on 10.3.2017 at about 11-45 PM at Kawaram Basti under Bokajan Police Station committed lurking house trespass by night by entering into the dwelling of the informant, Shri Parimal Panika for the committing any offence

and that he thereby committed an offense punishable U/S 457 of IPC?

(ii)Whether the accused person on the same date, time and place attempted to commit penetrative sexual assault upuon Smti. Phulmati Panika aged 14 years and that he thereby committed an offense punishable U/S 18 of the POCSO Act?

7. **Decisions and reasons thereof:**

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.

- 8. PW-1, Shri Parimal Panika is the informant of this case who deposed that the occurrence took place in the year 2017 and on the day of occurrence, he was not available at his house. On the next day of his arrival, his wife and son informed him that at 11/11-30 PM, the accused tried to enter into their house and seeing the attempt of the accused, the victim girl made hue and cry and the accused fled away. PW-1 lodged the ejahar at Bokajan Police Station regarding the occurrence. Police brought the victim to Diphu Hospital for medical examination. Statement of the victim was recorded in the Court and the Court handed over the victim to him.
- 9. PW-2, Miss Phulmoti Panika is the alleged victim of the case. The occurrence took place in the previous year. On the night of occurrence, the accused called her over telephone at about 11-30 PM telling her to come out of the house. At that time, she was sleeping in a small room made in their veranda.

Although the accused made telephone calls to her, she did not respond. When she received his call, accused urged her to come out of the house and she negated his proposal. Then the accused himself came to their house by climing a tree over the roof of her room and he tried to enter into her room by breaking the bamboo wall. On her shouting, her brother came out and the accused fled away. She informed the matter to her mother and brother. On that night, her father was not present at their house. In the next day, her father knowing all happenings lodged dthe case at the police station. Police got her examined in the hospital and her statement recorded. Ext.2 is her statement and Ext.2(1) and 2(2) are her signatures. At the time of occurrence, she was of 14 years old.

- 10. PW-3, Shri Harsing Enti Taro testified that he knows the informant, accused and victim girl. The incident took place in the year 2017. On the night of the occurrence at 9-10 PM, the informant made telephone call to the VDP President stating that accused, Krisna Das tried to rape his minor girl by breaking open the bamboo wall and on her shouting, the accused fled away. This matter was informed to police by VDP President. Before his arrival with police at the place of occurrence, villagers caught the and kept him tied in the courtyard. Then police accused interrogated the accused and took him to police station. Villagers reported that the accused entered into the bedroom of the victim by cutting the upper portion of bamboo wall. As per his information, the victim was 13/14 years old at the time of occurrence.
- 11. PW-4 is Shri Sankar Panika has that he knows the informant, accused and the victim. The incident occurred one year ago. On the day of occurrence at about 9 O' clock, the complainant over telephone informed him that accused, Krisna Das entered into the room of the victim by cutting the bamboo wall. He instantly came to the house of the informant and noticed a hole (way for entrance) of the wall. He also noticed that a pair

of sandal belonging to accused was lying outside the room. Before his reaching to the place of occurrence, villagers nabbed the accused and accordingly, he informed police. On arrival of police, he handed over the accused to the police. Police took his statement.

- 12. PW-5 is Shri Raj Kumar Panika testified that he knows the informant, accused and the victim. The incident occurred in the year 2017 and on the night of occurrence at 11 O' Clock, he heard hue and cry made by Kamal Panika. Kamal is nephew of the informant who he stays at the house of the informant. Kamal Panika informed him that although one person entered into the room of victim, Phulmoti by cutting upper portion of the bamboo wall, but on her shouting, that person left the place. He found a pair of sandal near the bamboo wall and thereby he could guess that the pair of sandal might belong to the accused. Later on, he and others went to the house of the accused and on being asked, mother of the accused told that the pair of sandal belonged to the accused. At that time, accused was not present there. Subsequently, the accused over telephone intimidated him and told that he would kill him(PW-5). He informed the matter to the VDP and after two days, VDP apprehended the accused and handed him over to police.
- 13. PW-6 is Shri Kamal Panika who has stated that informant, accused and victim girl are known to him. The incident occurred in the year 2015.

 On the day of occurrence, he stayed in the house of the victim girl as her father was not available on that day. While he was sleeping, at about 11 PM, he heard shouting of the victim. Being awakened he came out and found the victim shouting repeatedly and accused having fled away. Later, the victim girl informed him that the accused climbing up the roof tried to enter into the room through the gap between end of the wall and roof. He noticed the dried clay (Beror Mati) fallen from the bamboo wall on the ground. He saw the accused fleeing away by jumping over the bamboo fencing. At

that time, PW5 came hearing his shouting. They could see the sandal and recognize it to be of accused. Thereafter, they took the sandal to the house of the accused and the mother of the accused recognized that it to be of accused. After two days of the occurrence, villagers could be able to nab the accused and they handed over the accused to the police. At the time of occurrence, victim was 14 years old.

- 14. PW-7 is Dr. Karik Kropi who has deposed in her testimony that on 02.5.2017 she exmined Smti. Phulmati Panika in connection with Bokajan PS Case No.48/2017. The victim refused for physical and genital examination. As per X-ray report, age of the victim girl was below 18 years(14-15 years). She opined that alleged history of sexual intercourse was absent. Ext.3 is medical report and Ext.3(1) and 3(2) are her signatures.
- 15. PW-8 is Md Rajib Ahmed who is the main investigating officer. He has stated in his evidence that at the time of investigation, he was ASI of police at Bokajan Police Station. During his investigation, he arrested the accused person on being produced by the villagers. He visited the place of occurrence, prepared the sketchmap, recorded the statements of the witnesses and sent the victim to Diphu Hospital for her medical examination. He produced the victim before the Court for recording her statement. On 14.3.2017 accused was sent to judicial custody. He collected the medical report and on completion of his preliminary investigation, he submitted the case diary to the OC concerned.
- 16. PW-9 SI Abdul Hye is another Investigating Police Officer who completed the subsequent part of investigation and finally he submitted the charge-sheet U/S 457/376/511 of IPC read with section 12 of the POCSO Act against the accused person. Ext.5 is charge-sheet and Ext.5 (1) is his signature.
- 17. From the cross-examination of the informant marked as PW-1 that the accused climbed the tree and tried to enter into the house by breaking its wall. Ext-1 is the Ejahar which shows that

the entered into his house in his absence and tried to make sexual intercourse with his victim daughter. The evidence of victim girl is most vital and material. Her evidence shows the accused climbed a tree and tried to enter into the room where she was sleeping. Her evidence also gives smell that there was love affairs between the accused and the victim girl. At the time of occurrence, in the house her mother and brother were sleeping and she was sleeping in a room constructed in the verandha. Her evidence shows that while the accused was trying to enter into the house, she raised shouting. Hearing shouting raised by her, the accused fled away. There after she told the matter to his mother and brother. Considering nature of case, non-examination of the mother and brother of the victim child is fatal to the prosecution.

18. PW-7 is the medical officer. His evidence shows that the age of the victim was below 18 years at the time occurrence. Evidence of PW-4, PW-5 and PW-6 shows that in the PO a pair of sandals were found which were identified belonging to the accused. But evidence of the investigating is totally silent that a pair of sandal was seized in connection. Hence I find the story of a pair of sandal to be doubtful. There are also different stories regarding arrest of the accused. I also find evidence of the victim child not free from doubt. PW-6 is cousin who was in the house of the informant on the night of occurrence. His evidence shows that he saw the accused person fleeing from the house but the same was stated to the investigating officer. I find major contradictions on material points.

ORDER

20. In the result I find that the prosecution has failed to prove Its case beyond all reasonable doubts against the accused person. Hence on benefit of doubt the accused person is hereby acquitted from the charges brought against him and let them set at liberty forthwith. The

Superintendent of District Jail is asked to release the accused person with immediate effect if he is not wanted in any other case. Inform him accordingly. No order for recommending for compensation to be paid to the victim child through her informant father under the scheme of Victim Compensation as laid down under section 357 A of the CrPC is passed.

- 21. Accordingly this case is disposed of.
- 22. Given under my hand and seal of the Court on this 10th September, 2018 at Diphu, Karbi Anglong.

Dictated and Corrected by me

(Md. A.U.Ahmed, AJS) Special Judge Diphu, Karbi Anglong, Assam Diphu, Karbi Anglong, Assam

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

APPENDIX

Prosecution Examined

PW-1 Shri Parimal Panika

PW-2 Miss Phulmoti Panika

PW-3 Shri Harsing Engti

PW-4 Shri Sankar Panika

PW-5 Shri Raj Kumar Panika

PW-6 Shri Kamal Panika

PW-7 Dr. Karik Kropi

PW-8 Md. Rajib Ahmed

PW-9 SI Abdul Ali

Prosecution Exhibited

Ext-1 is the Ejahar

Ext-2 is the victim statement.

Ext-3 is the Medical Report

Ext-4 Sketchmap of the PO.

Ext-5 is the Charge Sheet.

Defence Examined: Nil Defence Exhibited: Nil

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

Diphu, Karbi Anglong, Assam