IN THE COURT OF THE SPECIAL JUDGE ::::::::: CHIRANG, KAJALGAON.



Special (P) Case No. 19(S)/2017 U/S 120(B)/354A IPC R/W Section 12 of POCSO Act.

State of Assam

Vs.

Sri Ganesh Barman Smt. Raneka Sutradhar

.....Accused

PRESENT:

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri N.I. Siddique, Ld. Advocate

Date of evidence

: 21.02.18, 21.03.18, 04.04.18,

18.04.18, 05.05.18, 16.05.18.

Date of Argument

: 22.05.2018

Date of Judgment

: 05.06.2018

JUDGMENT AND ORDER

1. The prosecution case in brief is that the accused persons, in the name of practicing black magic, had been involving in illicit acts since long and on 28.07.2017 at about 6.30 PM, the accused Ganesh Barman, in the name of curing the illness of the victim X (name is withheld), the 12 years old ailing daughter of the informant, tried to commit illicit sexual intercourse upon her. It is further alleged that other accused Raneka Sutradhar used to assist accused Ganesh Barman in committing such illicit acts.

- The matter was informed to the O/C, Sidli Police Station who 2. accordingly registered a case being Sidli P.S. Case No. 31/2017 U/S 120(B)/420/354(A) IPC read with Section 11 of POCSO Act and entrusted ASI Mofiul Hussain to investigate the case. Accordingly, the I.O. arrested the accused, visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC and after completion of investigation, submitted charge-sheet against the accused persons, namely, Ganesh Barman and Raneka Sutradhar U/S 420/354 IPC read with Section 12 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused persons. Accused persons were produced before the court from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, my learned predecessor framed charge U/S 120(B)/354A IPC read with Section 12 of POCSO Act against accused Ganesh Barman and U/S 120(B) IPC against accused Raneka Sutradhar. Charge was read over and explained to the accused persons to which they denied to plead guilty.
- 3. In support of the case prosecution side examined as many as 8 (eight) witnesses including the I.O. and M.O.

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Following witnesses are examined:-

- (1) Smt. Tuli Sutradhar as PW 1
- (2) Sri Prabin Sutradhar as PW 2
- (3) Smt. Bibha Sutradhar as PW 3
- (4) Smt. Sakuntala Sutradhar as PW 4
- (5) Sri Khireswar Sutradhar as PW 5
- (6) Victim as PW 6
- (7) Sri Kaikhosch Simte as PW 7 (I.O.)
- (8) Dr. Meena Hazarika as PW 8 (M.O.)
- 5. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.1. Charge-sheet was exhibited as Ext.2, medical report was exhibited as Ext.3 and FIR was exhibited as Ext.4.

- Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.

8. Now points for consideration:-

For the offence U/S 120(B) of IPC

1. Whether on 28.07.2017 at about 6:30 P.M. at Namalpur, Sidli under Sidli P.S., the accused persons agreed with one another to do or cause to be done an illegal act, namely, to commit sexual harassment on the victim?

For the offence U/S 354A of IPC

2. Whether on the said date, time and place, the accused Ganesh Barman committed sexual harassment on the victim by undressing himself with a demand or request for sexual favours against the will of the victim?

For the offence U/S 12 of POCSO Act

3. Whether on the said date, time and place, the accused Ganesh Barman committed sexual harassment on the victim by undressing himself and exhibiting his body part?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding Section 354A IPC read with Section 12 of POCSO Act.
- 10. PW 1 is the informant. She deposed that occurrence took place about eight months ago. Her daughter was often weeping for which she asked her what was the reason for her weeping, then her daughter replied that accused Ganesh Barman tried to commit sexual intercourse with her by taking recourse of some black magic. This witness deposed that matter was informed to her by her elder daughter Bibha Sutradhar. She was in the market at the

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time of occurrence. When she reached her home, her elder daughter Bibha Sutradhar reported her about the incident. She found her younger daughter, the victim in senseless condition. According to PW 1, victim regained her sense after two days. During the time of cross-examination, PW 1 stated that she called accused Ganesh Barman to her home for the treatment of her daughter because her daughter had been suffering from illness for a prolonged period. Therefore, accused Ganesh Barman often visited their home. He also performed puja in this respect. According to PW 1, as her daughter was weeping for a sufficient days, she reported the matter to the accused because he was a kabiraj. This witness stated that other accused Raneka Sutradhar accompanied the accused Ganesh Barman regularly. The learned defece counsel denied the allegation leveled against the accused that he put off the panty of the victim and he himself became undressed.

victim. This witness deposed that her younger sister had been suffering from prolonged illness. Accused Ganesh Barman is a village kabiraj. He advised

PW 3 is the material witness, who is the elder sister of the

them to perform puja for her younger sister. On the date of occurrence, she went to the market to purchase some puja offerings. When she returned from the market and entered into her paternal home, she noticed that accused Ganesh Barman and her sister were in naked state. At that time, her sister was in unconscious condition. This witness stated that accused tried to commit sexual intercourse with her sister but after seeing her, he debarred himself from doing such act. PW 3 further deposed that other accused Raneka Sutradhar was sitting at the place of occurrence. When she reached the place of occurrence, except her sister and accused persons, no one was present. During cross-examination, this witness admitted the fact that prior to this incident, accused Ganesh Barman treated her sister. She further admitted that on the date of occurrence, victim became senseless. The learned defence

counsel gave suggestion that as her sister became senseless due to treatment

of the accused for which FIR was lodged by stating a false story which was

denied by this witness. The suggestion given by learned defence counsel that

PW 3 did not see the accused and the victim in naked state was also strongly

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denied by the PW 3.

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- PW 2 is a villager. He knows both the accused and informant. 12. He stated that accused Ganesh Barman was a village doctor and other accused Raneka always accompanied him. On the date of occurrence, his wife reported that local people caught both the accused persons in the house of the informant. After knowing the fact, he rushed to the house of the informant and saw that accused persons were sitting in the courtyard of the informant. According to PW 2, accused Ganesh Barman confessed his guilt stating that he tried to commit sexual intercourse with the victim. Then police came to the spot. During cross-examination, this witness stated that he heard the entire incident from the informant. Learned defence counsel did not deny that accused had confessed his guilt. So, this fact was remained as unrebutted.
- PW 4 has no direct knowledge. He only knew that accused was 13. a kabirai.
- PW 5 is the father of the victim. He heard about the incident 14. from his wife, the informant. He had no direct knowledge about the incident.
- Victim girl was examined as PW 6. She deposed that at the time of occurrence, she was reading in Class V in No. 92 Sidli Lower Primary School. She deposed that both the accused persons belonged to their village. Occurrence took place about 10 months ago. She further deposed that she did not fail in any class. She deposed that she used to cry regularly for which matter was informed to the accused Ganesh Barman who is village kabiraj. Then he told them that it was due to some wrong done towards God Shiva for which puja is required to be performed. Accordingly, on the date of occurrence, her elder sister Bibha Sutradhar went to market for purchasing puja offerings. She deposed that she was alone in their home. At about 10 O'clock, accused Ganesh Barman and Raneka Sutradhar came to their home. The accused Ganesh Barman tried to do some black magic for which she was asked to sit on the ground. After that he put off her wearing apparels. He himself became undressed. At that moment, her elder sister, PW 3 Bibha Sutradhar reached the spot and noticed them in the naked state. This witness further deposed that other accused Raneka Sutradhar closed the door and she was sitting outside. After becoming undressed, the victim lost her sense as

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stated by her. The victim was taken to the Court for recording her statement U/S 164 CrPC. Said statement was exhibited as Ext.1. I have gone through the statement. It is found that in the statement victim stated that accused himself became undressed. It was not stated by victim that accused put off her wearing apparels. At that time, victim stated that the accused tried to do some bad acts over her. No any allegation was revealed against the other accused Raneka Sutradhar. During cross-examination, PW 6 admitted that she had been suffering from illness for a period of six months and she was treated by accused Ganesh Barman. She further admitted that she had not stated before the police that accused put off her wearing apparels and at that moment, her elder sister saw her. She also admitted that she had not stated before the police that other accused Raneka closed the door and she was sitting outside. Learned defence counsel during cross-examination, gave suggestion that accused did not put off her wearing apparels and undressed himself, which was denied by PW 6. According to learned defence counsel, case was lodged falsely as because victim became senseless due to the treatment given by accused but said suggestion was totally denied by the victim.

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- 16. PW 7 is the investigating Officer who submitted charge-sheet. The Investigating Officer stated that ASI Mofiur Hussain performed the prestep of the investigation but he died during last November, 2017. As the I.O. died, this witness confirmed the contradiction pointed out by Ld. defence counsel. During cross-examination, PW 7 deposed that PW 1 did not state before the Investigating Officer that her daughter had reported the incident to her. PW 5 also did not state before the Investigating Officer that on the date of occurrence, he heard from his wife that accused tried to commit sexual intercourse with his ailing daughter. The FIR was exhibited by the I.O. because the informant put her thumb impression upon the FIR.
- 17. PW 8 is the Medical Officer, who examined the victim. During clinical examination, she found the followings:-

The victim was conscious. Average built. Auxiliary hair - present. Breast - developed. No injury marks on her body. No. of teeth - 7/7,

7/7. Perineum – No injury marks. No stain of semen. Pubic hair – present but scanty. Vaginal examination – hymen absent.

From the clinical examination, Medical Officer opined that it could not be ascertained whether she has been raped or not. It is found from the evidence of the PW 8 that age of the victim was not ascertained according to radiological test. On the basis of school certificate, age was determined.

18. After going through the entire evidence on record, I have found that there are some minor discrepancies and contradictions amongst different witnesses and their earlier statements before the Magistrate and I.O. It is found from the evidence of material witness PW 6 that during the time of her initial statement U/S 164 CrPC, she did not state that accused put off her wearing apparels. In that statement she did not state that other accused Raneka closed the door and she was sitting outside. In the FIR, it was mentioned that occurrence took place at about 6.30 p.m. but victim deposed before this Court that accused persons came to their home at about 10.00 a.m. Learned defence counsel pointed out that only one thing is remained unquestionable which is, "The accused Ganesh Barman undressed himself." During her initial statement, the victim stated that accused undressed himself and wanted to do bad act. On the other hand, during her later deposition before this Court, victim stated that at first accused put off her wearing apparels and kept her naked. After that he himself became undressed.

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- 19. Section 11 of POCSO Act defined sexual harassment as follows:
 - **"11. Sexual harassment.** A person is said to commit sexual harassment upon a child when such person with sexual intent.—
 - (i) utters any word or makes any sound, or makes any gestures or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gestures or object or part of the body shall be seen by the child; or

- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.
- 20. So, from above Section, it is found that if any person exhibits part of his body with intention that shall be seen by the child is also sexual harassment. In present case at hand, accused Ganesh Barman became undressed and showed her private parts to the victim. From the evidence of the victim and the medical report, I have found that victim was minor and she was below 18 years. According to PW 6, she was reading in Class V and she did not fail in any class. Other witnesses also admitted this fact. No any question was raised by learned defence counsel regarding her age. So, it is proved beyond doubt that victim was minor. She was child at the time of occurrence. The accused showed his undressed body to the victim by which he committed the offence of sexual harassment as defined under Section 11 of POCSO Act.
- 21. If I compare Section 354A IPC with that of Section 12 of POCSO Act, I have found that Section 12 of POCSO is greater in degree. The punishment for Section 354A IPC is imprisonment which may extend to one year, or with fine, or with both. In case of Section 12 of POCSO Act, punishment is imprisonment of either description for a term which may extend

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to three years and shall also be liable to fine. According to Section 42 of POCSO Act, if there are punishment between any offence under IPC and POCSO Act, the offender found guilty of such offence shall be liable to punishment under the POCSO Act or under the Indian Penal Code as provides for punishment which is greater in degree. Therefore, I have found that accused Ganesh Barman committed offence which is punishable under Section 12 of POCSO Act.

22. Now, I want to discuss Section 120(B) IPC. The other accused Raneka Sutradhar was charged with Section 120(B) IPC. To convict a person U/S 120(B) IPC, prosecution must have to prove criminal conspiracy as defined U/S 120(A) IPC which runs as follows:-

"120-A. Definition of criminal conspiracy: When two or more persons agree to do, or cause to be done:

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

23. To prove criminal conspiracy, a prior agreement between the accused is must. This must have to be proved through any circumstances or the conduct of the accused. In present case at hand, the victim stated that accused Raneka closed the door from outside but this fact was not stated by her before the police as well as before the Magistrate. No any allegation was leveled by the victim against Raneka Sutradhar during the time of her statement U/S 164 CrPC. In my view, this fact was afterthought from the side of the victim. Hence, alleged act of accused Raneka is not believable. The PW 3 also did not state that door was closed from outside when she reached her parental home. This fact is not reliable at all. Except this fact, noting was

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found to prove the fact that there was criminal conspiracy between the accused Ganesh Barman and Raneka Sutradhar. On the other hand, it is revealed from entire evidence on record that accused Ganesh Barman had been giving treatment for ailment of PW 6 for a period of 6 months. The accused Raneka Sutradhar accompanied him regularly for the treatment only. Prior agreement between the accused Ganesh Barman and Raneka Sutradhar is not proved. Therefore, Section 120(B) IPC is not attracted in this case against the accused Raneka Sutradhar. She cannot be booked for the offence U/S 12 of POCSO Act R/W Section 120(B) IPC. So, prosecution failed to prove the case against the accused Raneka Sutradhar. She is not found guilty. On the other hand, prosecution proved the case against accused Ganesh Barman U/S 12 of POCSO Act beyond all reasonable doubt. On the other hand, point numbers 1 and 2 are also not proved against the accused Ganesh Barman.

ORDER

- 24. Prosecution proved the case U/S 12 of POCSO Act against the accused Ganesh Barman beyond all reasonable doubt. He is convicted U/S 12 of POCSO Act. As accused Ganesh Barman is convicted in greater offence, he is not convicted U/S 354A/120(B) IPC.
- 25. On the other hand, prosecution failed to prove the case U/S 12 of POCSO Act R/W Section 120(B) IPC against accused Raneka Sutradhar. She is acquitted and set at liberty. She is in jail. Therefore, Jail authority is directed to release her, if she is not required in any other case.
- 26. I have not considered the Section 360 CrPC or Section 4/5 of Probation of Offenders Act. If in this case, accused is released on probation, it will give a wrong message to the society for which benefit of these sections are not given to the accused.
- 27. Heard the accused and his engaged counsel on point of sentence which is recorded and kept with C.R. in separate sheet.

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28. Accused pleaded mercy of the Court considering his period of detention and his economic condition. According to the accused, this is the first offence and he is coming from a very backward family.

I have found from the evidence on record that this is the first 29. offence committed by the accused as because prosecution failed to prove any previous conviction of the accused during trial.

30. Considering all aspects, accused Ganesh Barman is sentenced to undergo simple imprisonment for 1 (one) year and to pay a fine of Rs. 5,000/- (Rupees Five Thousand), in default, another 3 (three) months S.I.

31. Accused has been languishing in jail since 29.07.2017. The entire period shall be set off from the sentenced period as per provision of Section 428 CrPC.

32. A copy of this Judgment shall be furnished to the accused on free of cost. Another copy of this Judgment shall be given to the District Magistrate, Chirang and the Superintendent of District Jail, Kokrajhar for information and necessary action.

Given under my sign and seal of this Court on this the 5th day 33. of June, 2018, at Kajalgaon, Chirang.

Dictated and corrected by me,

APPENDIX

Prosecution witness:

PW 1 - Smt. Tuli Sutradhar

PW 2 - Sri Prabin Sutradhar

PW 3 - Smt. Bibha Sutradhar

PW 4 - Smt. Sakuntala Sutradhar

PW 5 - Sri Khireswar Sutradhar

PW 6 - Victim

PW 7 - Sri Kaikhosch Simte (I.O.)

PW 8 – Dr. Meena Hazarika (M.O.)

Exhibit (Prosecution):

Ext-1 Statement of the victim U/S 164 Cr.P.C.

Ext-2 Charge-sheet

Ext-3 Medical report

Ext-4 FIR

Material Exhibit (Prosecution):

Nil

Defence Witness:

Nil

Defence Exhibit:

Nil

(D.J. Mahanta)

Special Judge, a. Chicang jalgaen