## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

**SPECIAL (POCSO) CASE NO.** :- **81 OF 2018** 

(Under Section 448 IPC read with

section u/s 8 of the POCSO Act. )

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

**Tezpur** 

Prosecutor :- State of Assam

-vs-

Accused :- Sri Gobinda Karmakar,

Son of Dandia Karmakar,

Resident of Dhulapadung Tea Estate,

Police Station – Rangapara, Dist:- Sonitpur, Assam

Date of framing Charge :- 31/10/2018

Date of Recording Evidence :- 12/11/2018

Date of examination of accused u/s

313 Cr.P.C.

:- 12/11/2018

Date of Argument :- 12/11/2018

Date of Judgment :- 12/11/2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Smti Dulumoni Sinha, Advocate.

## **JUDGMENT**

1. In this case accused Sri Gobinda Karmakar is put for trial for allegation of charge under Section 448/376/511 of the IPC read with section 8 of the POCSO Act, 2012.

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- 2. The prosecution case according to the FIR in brief is that on or about 2.30 p.m. of 18-09-2018 taking advantage of absence of informant, accused who belongs to the neighbour of the complainant entered into their house and committed rape on her daughter. Hence, this prosecution case.
- 3. The ejahar was filed by the informant Anita Sowra before the O/C of Rangapara Police station on 18-09-2018. On being received the ejahar, Officer-In-Charge of Rangapara Police Station registered the case vide Rangapara P.S. Case No. 169/2018 u/s 448/376(1) of the IPC read with section 4 of the POCSO Act. After completion of usual investigation, the O/C Rangapara Police Station filed charge sheet u/s 448/376/511 of IPC r/w section 8 of the POCSO Act against the accused Sri Gobinda Karmakar.
- **4.** On being appeared the accused before this Court, after hearing both parties, I framed charge u/s 448/376/511 of the IPC read with section 8 of POCSO Act, 2012 against the accused Sri Gobinda Karmakar and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case, prosecution has examined three witnesses i.e. the complainant, victim and other one independent witness. After recording evidence of the said complainant, victim and other independent witnesses, learned counsel for the accused submitted to close the evidence on the ground that the statement of material witnesses reveals no any materials as to any of the alleged charge against the accused.
- **6.** Learned Public Prosecutor, Sonitpur, Tezpur has also conceded.
- On perusal of the statement of the aforesaid witnesses, i.e. complainant, victim and other one independent witness, it appears that none of the witnesses reveals any materials of any alleged offence against the accused. Therefore, I think prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering all these aspects, prosecution evidence is closed. Accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears

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against the accused are put before him for his explanation where he denied the allegations and declined to adduce defence evidence.

- **8.** I have heard the argument put forward by the learned counsels of both sides.
- **9.** The point for decision in this case is that -
  - (1) "Whether on or about 2.30 p.m. of 18-09-2018 at Dhulapadung Tea Estate under Rangapara Police station, the accused committed criminal trespass by entering into the house of informant Anita Sowra with intent to commit rape on Miss X (15 years of age when she was alone at home and thereby committed an offence punishable under section 448 of the IPC?
  - (2) Whether the accused on the same date, time and place attempted to commit rape on the victim Miss X and thereby committed an offence punishable u/s 376/511 of the IPC?
  - (3) Whether the accused on the same date, time and place committed sexual assault on Miss X and thereby committed an offence punishable under section 8 of the Protection of Child from Sexual Offences Act?

## Reasons, Decisions and reason for decision.

- **10.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **11.** PW 1 Smti Anita Sowra who is the complainant of this case, stated before the court that victim is her adopted daughter. Her daughter is aged about 15 years. The incident took place on 18 -09-2018 at about 2.30 p.m. At that time she was not present at home. Her victim daughter during that time was alone at home. While she returned to home at about 4.30 p.m. she found her daughter was crying. At about 4 p.m. her husband on being came to know about the incident from one of the neighbor informed her over phone about the incident. While she asked her daughter why she was crying, she reported that accused came to their house asked her to open the door. When her daughter opened the door accused trespassed into the house and dragged the clothes of her daughter with intent to put off her clothes. Ext. 1 is the ejahar and Ext. 1(1) is her signature. Police seized one white and green striped sporting, one

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about 5 ft length printed Urna and black and blue half pant vide seizurelist, Ext. 2 where she put signature as witness. Ext. 2 (1) is her signature.

In cross-examination, she admitted that she has adopted the victim when she was 7/8 years old. She did not admit her in school. She has been residing with her for more than 12 years. From that count she was above 18 years at the time of incident. She has not stated to scribe to write the age of her daughter as 15 years. The ejahar was written by one scribe. Before putting her signature she did not read the ejahar neither it was read over to her by the scribe. In fact there is no such incident took place as stated in the ejahar. She put signature in the ejahar at the instigation of local public. She has not seen neither she has any personal knowledge that accused has entered into their house or not. It is a fact that accused used to visit their house to meet her husband quite off and on. In fact police did not record her statement. They have no any complain against the accused.

12. PW 2, Sri Benjamin Hasapurty, stated before the court that he knows the accused Gobinda Karmakar. He also knows the victim girl who is aged about 17 years. The mother of the victim who is a Nurse also present in the court today. The incident took place about three months ago. Sarathi Sowra informed him over phone that his daughter was raped by Gobinda Karmakar. Then he advised him to go to the Police station. Thereafter, mother of the victim filed the ejahar. Police seized one white and green striped sporting, one about 5 ft length printed Urna and black and blue half pant vide seizurelist, Ext. 2 where she put signature as witness. Ext. 2 (2) is her signature.

In cross-examination, he admitted that the garden where he lived is at a distance of 8 km from Dhulapadung Tea estate. He can not say whether the incident is true or false. He did not enquire regarding the veracity of the information. Lateron he came to know that no such incident took place.

**PW 3,** the victim Miss X, stated before the court that complainant is her mother. Accused Gobinda is their nieghbour. He often used to visit their house. The incident took place about 3 months ago. At about 2.30 p.m., she was in the home. Accused came to their house and asked her whether her father is

available or not. She replied that her father is absent. Accused came and dragged her sporting, then she raised alarm. On hearing her hulla neighbouring people arrived there. At about 4.30 p/.m. her mother came. During that time she was crying. On being enquired by her mother, she reported that accused came to their house and only dragged her sporting but he did not do anything. Then her mother filed the case. After instituting the case police recorded her statement u/s 161 Cr.P.C. In the next day, police took her to the hospital for medical examination. On that day, her statement was recorded through the learned Magistrate u/s 164 Cr.P.C. Ext. 3 is her statement and Ext. 3(1) is her signature. During investigation police seized her wearing apparels.

In cross-examination she admitted that she could not say her exact age. She has been residing with her mother for more than 12 years. Her age may be 18 years or above 18 years. When she was adopted by her mother she was 7/8 years old. Accused Gobinda used to visit their house off and on. When accused Gobinda entered into their house she was feeding meal to her younger brother who is in her lap, aged about 21/2 years old. When accused attempted to took her younger brother to his lap from her lap, accidently her sporting was also dragged. In fact, accused has no any bad intention. It occurred due to accident but out of fear she raised alarm and started to crying. When her mother arrived at home she reported about the incident. At the time of recording her statement at police station she has been followed by some local public. In fact she reported to the I.O. what she has stated before the court. Two local women who accompanied her to the court tutored her what to state before the learned Magistrate. Accordingly, she made statement before the learned Magistrate. She does not have any grievance against the accused. As the accused has committed no any offence as alleged, so she has no any objection, if he is enlarged on acquittal.

## **14.** These much is the evidence of the prosecution case.

Now, the question come – whether the aforesaid evidence adduced by the complainant, victim and other one witness, the accused can be convicted?

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- **15.** Since the case is charged u/s 448/376/511 of the IPC read with section 8 of POCSO Act so, I think to see what is the ingredients of 448 of the IPC and 8 of the POCSO Act.
- **16.** To prove the charge under Section 448 of the IPC, the prosecution must prove :-
  - "(i) that the accused committed criminal trespass.

    (ii) that such criminal trespass was committed by entering into, or remaining in, a building, tent or vessels.

    (iii) that such building, tent, or vessel, was used as a human dwelling or as a place of worship, or as a place for the custody of property."
- **17.** Since the case is charged u/s 376 read with section 511 of the IPC, therefore, the prosecution is to prove that accused attempted to commit rape upon the victim:-
- "Inorder to find the prisoner 18. It has been held in **Rex Vs. Lloyed**, thatquilty of an assault with intent to commit a rape, you must be satisfied that the prisoner. When he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events and notwithstanding any resistance on her part. We believe that in this country indecent assaults are often magnified into attempts at rape, and even more often into rape itself; and we think a conviction of an attempt at rape ought not to be arrived at, unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events, and inspite of all resistance. In the present case, having regard to the medical evidence, and to the varying statements made at different times by the complainant, we find it impossible to place entire reliance upon her statement; and, as to the extent of the violence to which she was subjected, there is no evidence except her own statement. The Sessions Court has not believed her allegation that penetration took place, and has consequently refused to convict the prisoner of rape. We feel a similar hesitation in coming to the conclusion, on the complainant's unsupported statement, that the prisoner's conduct amounted to an attempt to commit rape. He seems to have desisted before he was interrupted; and no evidence has been given to show that the complainant's person showed marks of violence nor that the clothes, either of

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the complainant or the prisoner showed any stains which would indicate to what point the prisoner's criminality had proceeded.

**19.** Similarly, to bring the charge under section 8 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 7 of the POCSO Act:-

#### Section 7 - sexual assault-

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration issaid to commit sexual assault"

20. Here in this case, the complainant who is the mother of the victim clearly admitted that in fact there is no such incident took place as stated in the ejahar. She put signature in the ejahar at the instigation of local public. She has not seen neither she has any personal knowledge that accused has entered into their house or not. Similarly, victim also admitted in cross-examination that entered into their house she was feeding meal to her when the accused younger brother who is in her lap, aged about 21/2 years old. When accused attempted to took her younger brother to his lap from her lap, accidently her sporting was also dragged. In fact, accused has no any bad intention. It occurred due to accident but out of fear she raised alarm and started to crying. When her mother arrived at home she reported about the incident to her. Therefore, there is no any criminal intention of accused as stated by complainant as well as the victim, therefore, the allegation of charge u/s 448/376/511 of the IPC is failed.

Similarly, here in this case, the victim herself admitted that when the accused attempted to took her younger brother to his lap from her lap, accidently her sporting was also dragged. In fact, accused has no any bad intention. It occurred due to accident but out of fear she raised alarm and started to cry. At last, the victim stated that she do not have any grievance against the accused. It is also stated that as the accused has committed no any offence as alleged, so she has no any objection, if he is enlarged on acquittal. Similarly, complainant has also admitted that she has no any complain against

the accused. Therefore, not a single ingredient of aforesaid alleged charge u/s 8 of the POCSO Act was complied, hence, failed.

**21.** Under such circumstances, I have no hesitation to hold that the prosecution has failed to prove any of the charge levelled against the accused beyond any reasonable doubt. Hence, I acquit the accused Sri Gobindra Karmakar and set him at liberty.

Given under my Hand and Seal of this Court on this the 12  $^{\rm th}$  day of November, 2018.

(Ashok Kumar Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

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# **APPENDIX**

# **Prosecution Witness**

1. Prosecution Witness No.1 :- Smti Anita Sowra, Complainant

2. Prosecution Witness No.2 :- Sri Benjamin Hasapurty.

3. Prosecution Witness No.3 :- Victim Miss X.

## **Exhibits.**

Exhibit 1 :- Ejahar

Exhibit 1(1) 2(1) :- Signatures of the complainant.

Exhibit 2 :- seizurelist.

Exhibit 2(2) :- Signature of Benjamin Hasapurty.

Exhibit 3 :- statement of the victim u/s 164 Cr.P.C.

Ext. 3(1) : Signature of the victim.

(Ashok Kumar Borah) SPECIAL JUDGE SONITPUR: TEZPUR

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