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

**SPECIAL (POCSO) CASE NO.** :- 24 OF 2016

(Under Section 8 of the POCSO Act, arising out of G.R. Case No. 1032 of

2016)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Raju Choudhury

Son of Late Ganga Choudhury,

Resident of Lalmati Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge :- 13-07-2016.

Date of Recording Evidence :- 29-11-2016 & 13-07-2017

Date of examination of accused u/s :- 13-07-2017

313 Cr.P.C

Date of Argument :- 13-07-2017

Date of Judgment :- 13-07-2017

Counsel for the Prosecution :- Mrs. M. Ch. Baruah,

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. A. Bhuyan, Advocate.

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### **JUDGMENT**

- 1. In this case accused Sri Raju Choudhury is put for trial for allegation of charge under Section 8 of the POCSO Act, 2012.
- The factual matrix according to the FIR, in brief, is that on or about 9.30 p.m. of 09-04-2016 while the informant's 14 years minor daughter and 8 years son were sleeping, accused attempted to enter into the house of the informant secretly and out of fear informant's minor raised alarm. On hearing alarm, the informant went out and noticed that accused ran away from their house. Immediately, she also raised alarm. The local people caught the accused red handed. The accused was involved in such type of bad activities in earlier many occasions. Hence, this prosecution case. The ejahar was filed by informant Smt. Chandrabati Devi @ Mukhia on 09-04-2016 before the I/C of Lalmati Police Out Post under Tezpur Police station. The ejahar was signed by many local public.
- On receipt of the ejahar, the Incharge of Lalmati Out Post by giving the 3. GD Entry No. 180 dated 10-04-2016 forwarded the same to Officer-In-Charge of Tezpur Police Station for registering a case. On receipt of the ejahar, O/C of Tezpur Police station registered a case being Tezpur P.S. Case No. 567/16 u/s 457/376/511/323 of IPC. After completion of usual investigation, the O/C Tezpur Police Station sent up the accused for trial by filing charge sheet u/s 457/376/511 IPC against the accused Sri Raju Choudhury.
- On being appeared the accused before this Court, after hearing both parties, framed charge under section 8 of POCSO Act, 2012 against the accused 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 examined as many as four numbers of witnesses which includes the victim, mother of the victim and neighbour. Learned counsel for the accused submitted that the statement of the victim, her mother and the nighbour no way supported the prosecution case. Hence, praying for closing the evidence. Even if examined the other witnesses with the evidence of the victim prosecution case would not develop. Learned Public Prosecutor also conceded. I have thoroughly, perused the

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statement of the victim, mother of the victim and the nighbour. It also appears that none of the statement of the witnesses reveals any materials against the accused as to the alleged offence. Therefore, I think that it would be futile to examine the other witnesses. Even if examined the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused persons. Considering 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 against the accused are put before him for explanation where he denied the allegations and declined to adduce defence evidence.

- **6.** I have heard the argument put forward by the learned counsels of both sides.
- **7.** The point for decision in this case is that -
  - (1) "Whether on 09-04-2016, at Lalmati Tior Basti, under Tezpur Police station the accused sexually assaulted Miss X (a child below 18 years of age) and thereby committed an offence punishable under section 8 of the Protection of Child from Sexual Offences Act?

    Reasons, Decisions and reason for decision.
- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1 Dr. Bibhanoni Keot, stated that on 11-04-2016 she was posted as Sr. Medical & Health Officer-1 in the Kanaklata Civil Hospital, Tezpur and on that day at about 1.50 p.m. in the labour room complex of KCH, she examined Miss Maya Kumari, 16 years, female, D/O late Bhutuli Mukhiya of Lalmati, Teor basti, Tezpur, in reference to Lalmati OP GDE No. 567/16 dated 11-04-2016 u/s 457/376/511/323 of the IPC, on being escorted and identified by WPC 547 Banti Mech. History pm 09-04-2016 at 9.30 p.m. a boy named Raju Choudhury entered into the living room and while she was sleeping, he lifted the mosquito net and the girl shouted. No history of sexual exposure. On examination, no external injury seen. Ext. 1 is her report and Ext.1(1) is her signature.

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**10.** PW 2 Smt. Chandrawati Devi (Mukhia), mother of the victim girl, stated that she knows the accused. At the relevant time, the victim attained the age of 18 years. At the relevant time the victim along with her 8 years son Dinesh were sleeping. On hearing the shouting of her daughter, she came out and saw that accused ran away from their house. Then she also raised alarm. On hearing her alarm local people gathered there and caught the accused. Of course, her daughter did not state anything to her. Then he filed the Ext. 2 and Ext. 2(1) is her signature.

In cross-examination, she admitted that she did not know the contents of the ejahar. She also admitted that both the complainant and accused are belonging to different caste. For this type of many reasons, they have a quarrel in between them. There is a road adjacent to their house. In between the road and house there is no any wall. Therefore, any person can easily enter into their house. By the said road people used as a through from. While she raised alarm on suspect local people caught the accused and according to the direction of public and also the writings of the public she put her signature in the ejahar.

**11.** PW 3, Smt. Kushmi Mukhiya stated that she knows the accused who belongs to their village. She also knows the victim who is the daughter of the complainant. Her house is adjacent to her house. At the relevant time, accused Raju went to the house of the complainant. When there was a hullah, local people caught hold of the accused by shouting "thief, thief". In the house of the victim, in one room complainant resides, in other room a young girl was sleeping. While the young girl (18 years) looks towards outside as the door was opened she noticed a man infront of their gate, so she raised alarm. Local people caught him. Thereafter with the signature of local people the complainant filed the ejahar.

In cross-examination, she admitted that there is a quarrel in between the complainant and the accused for a long time. She also admitted that there is a road adjacent to the house of the complainant where local people used the road day and night. 12. PW 4 Miss X, the victim stated that she knows the accused. The incident took place about one and half years ago. At the relevant time, at about 9/9.30 p.m. she along with her 8 years old younger brother was sleeping. In the other room her mother was watching TV. She doubted somebody has entered. So she looks towards the road and saw Raju Choudhury was standing infront of their door. She called her mother and brother. Then on hearing her hullah, her mother and brother came. They also raised alarm. Local public caught the accused. In fact accused did not do anything to her. Thereafter, her mother filed this case. After filing the case her statement was recorded through the Magistrate. Ext. 3 is her statement u/s 164 Cr.P.C. and Ext. 3(1) to 3(3) are her signatures.

In cross-examination, she admitted that their house is adjacent to the road. On being seen the accused on the road, out of fear she raised alarm. Her mother and local people on suspect filed this case. While she made statement before the learned Magistrate she made statement according to the dictation of the police personnel.

- **13.** These much is the evidence of the prosecution case. Defence plea is of total denial.
- **14.** Learned counsel for the accused submitted that the prosecution has failed to prove the charge against the accused beyond any reasonable doubt.
- **15.** Here in this case, the case is charged u/s 8 of the POCSO Act.

To brought the charge under section 8 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

#### 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 is said to commit sexual assault.

This clause defines the offence of sexual assault. It provides that a person is said to commit sexual assault if he 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."

**16.** A close scrutiny of the record, it appears that in this type of case, the evidence of the victim is most important.

Law is well settled that in a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and her mother (have falsely implicated the accused. The main evidence in all such cases is that of the victim herself. In practice a conviction for rape almost entirely depends on the credibility of the woman, so far as the essential ingredients are concerned, the other evidence being merely corroborative. It is not necessary that there should be independent corroboration of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the complainant is true and that it is reasonably safe to act upon it. The evidence, no doubt, should not only make it safe to believe that the crime was committed but must in some way reasonable connect or tend to connect the accused with the crime. Corroboration may be by facts and circumstances.

17. Here in this case, it appears that victim PW 4 who deposed her age is 19 years on 13-07-2017. It is interesting to note that though initially, the victim was examined by doctor PW 1 but her report is silent as to the findings of age on ossification test. Though she admitted that as per requisition slip her age is mentioned as 16 years but Doctor could not arrived her age on proper ossification test. Hence writing of age of the minor as 16 years cannot be accepted when the victim herself stated that her age is 19 years on the date of deposition i.e. on 13-07-2017. That apart, the complainant, PW 2 who is the mother of the victim stated that at the relevant time, the age of her victim daughter was 18 years. PW 2 being the mother of the victim supposed to be known better of each of her daughter. On the other hand, the I.O. has failed to procure any age certificate or birth certificate of the victim or the certificate of the school authority where the victim first studied.

It has been held by Hon'ble Apex Court in the case of **Jaymala Vs. State of J & K** reported in **AIR SC 1982** that "according to the Medical Jurisprudence the age reported by the doctor can be varied two years on either side."

Coming to the instant case, though the doctor reported about the age of the victim is 16 years not on ossification test, that was her mere opinion. In applying the principle of Medical Jurisprudence, her age can be stated as in between 14 and 18 years. Besides, the victim, the mother of the victim also stated that victim's age is 18 years. Considering that aspect, this case cannot lie under the POCSO Act.

Whatever it may be if we forget about the age factor whether in considering the statement of the victim accused can be convicted that has looked into.

Victim/PW 4 stated that she knows the accused and the incident took place at about one and half years ago at about 9/9.30 p.m. while she along with 8 years brother were in bed. The room where she and her younger brother were sleeping is situated just adjacent to the room where her mother watching TV. On suspect that somebody has come so she looks towards the road where she noticed accused Raju Choudhury was standing infront of their door. She called her mother and brother. Accordingly, they came and they also raised alarm. They also noticed accused went out from their house. Local people caught the accused. Hence, at the instigation of local people her mother filed the ejahar. In cross-examination she admitted that their house is adjacent to the public road. She also admitted that on being seen the accused on the road, she raised alarm out of fear. Then her mother and local people on suspect filed the case. She also admitted that while she made statement before the learned Magistrate u/s 164 Cr.P.C, she made statement at the instigation of the police. Therefore, the victim gives goodbye to the prosecution case. The another important witness is the mother of the victim, PW 2, who is also the complainant of this case, also stated that at the relevant time her victim daughter is aged about 18 years. Her daughter along with her 8 years son Dinesh was sleeping in bed. She heard raising alarm of her daughter and she

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came out and noticed that accused ran away from their house. While she raised alarm local people caught the accused. But her daughter did not state anything to her. Then she filed the ejahar. In cross-examination she admitted that she did not know the contents of the ejahar. She also stated that accused belongs to other community. Due to many reasons they have a quarrel with the accused. She also admitted that their house and road are adjacent and in between the road and the house there is no any wall. Therefore, any person can easily enter into their house. By the road, people were loitering in day and night. She also admitted that as she raised alarm so upon suspect local people instigated her to file this case. Therefore, the complainant who is the mother of the victim appears to have not supported the prosecution case in any means.

- **18.** Therefore, I do not have any opt but acquit the accused Sri Raju Choudhury and set him at liberty forthwith.
- **19.** The liability of the bailor is hereby discharged.

The GR Case No. 1032/16 be returned to the learned committal court with a copy of this order.

Given under my Hand and Seal of this Court on this the 13<sup>th</sup> day of July, 2017.

(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 :- Dr. Bibha Noni Keot.

2. Prosecution Witness No.2 :- Smt. Chandrawati Devi, complainant

3. Prosecution Witness No.3 :- Smt. Kushmi Mukhiya.

4. Prosecution Witness No.4 :- Victim.

### **EXHIBITS.**

Exhibit 1 :- Medical Report

Exhibit 2 :- Ejahar.

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

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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