# CAUSE TITLE POCSO Case No. 50/15

Informant: Smti. Bohagi Ghatowar,

D/o- Sri Kanta Ghatowar, R/o- No. 108 Khowang Grant,

PS- Moran,

District- Dibrugarh.

Accused: Sri Ajay Singh Ghatowar,

S/o- Sri Golap Singh Ghatowar, R/o- No. 108 Khowang Grant,

PS- Moran,

District- Dibrugarh.

# ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Sri KK Gogoi, learned Advocate.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 50/15 G.R. Case No. 1805/15

> > State of Assam

-Vs-

Sri Ajay Singh Ghatowar

Charges: Under Section 4 of POCSO Act.

Date of evidence on : 23-11-15, 30-01-16, 31-03-16, 07-12-16 and 05-01-18.

Date of argument : 31-03-18. Date of Judgment : 12-04-18.

#### **JUDGMENT**

- 1) A brief account of this case is that on 01-07-15, while the minor victim 'X' was alone at home with her old and aged father, Sri Ajay Singh Ghatowar (hereinafter the accused) entered into the victim's house and gagged her and committed rape on her. An ejahar regarding this incident was lodged by the victim's elder sister Smti. Bohagi Ghatowar when she learnt that the victim was contemplating to commit suicide. The informant learnt about the incident on 05-07-15 and lodged an ejahar with the police at Moran Police Station which was registered as Moran PS Case No. 220/15 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act in short).
- 2) The investigating officer (IO in short) embarked upon the investigation. He recorded the statement of the victim and forwarded her for medical examination. He also forwarded her to the Magistrate for recording her statement. He went to the place of occurrence, prepared the Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, he submitted Charge-Sheet against the accused under Section 4 of POCSO Act.
- 3) On appearance of the accused, copies were furnished and a formal charge under Section 4 of the POCSO Act was framed, read over and explained to

- the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, prosecution adduced the evidence of seven witnesses including the medical officer (MO in short) and the IO, whereas the accused did not tender any evidence in defence. He cross-examined the witnesses in extenso to refute the charges.

### **SUBMISSIONS:**

5) The learned Public Prosecutor Smti. Runumi Devi and learned Addl. Public Prosecutor Mrs. Sehnaz Akhtar submitted that this case has been proved beyond reasonable doubt and stringent punishment ought to be inflicted on the accused. The learned defence counsel emphasized in his argument that the accused deserves acquittal, because this case is replete with contradictions.

#### **POINT FOR DETERMINATION:**

- 6) On the backdrop of the rival proponements urged at the bar, the following points are apposite for proper adjudication of this case:
  - i. Whether on 06-07-15, at Khowang Ghat, the accused committed penetrative sexual assault upon the minor victim X?

# **DECISION THEREON AND THE REASONS FOR THE DECISION:**

- 7) To decide the case in its right perspective, it is necessary to delve into the evidence:
- 8) Smti. Bohagi Ghatowar testified as PW-1 that the accused is her relative and he resides near her house. The victim X is her younger sister. She further testified that she resides in Dibrugarh as she works in Dibrugarh. Her younger sister and her parent reside in the village. The incident took place on 01-07-15. At that time, she was at Dibrugarh as she works in Dibrugarh. On 05-07-15, her younger sister called her over phone and requested her to visit her. Accordingly, she went to her house and her younger sister who was in tears, informed her that 01-07-15, in the absence of their father in the house, the accused came and committed rape on her. The neighbourers informed her that her younger sister attempted to commit suicide after the alleged incident. On the following day, she took her sister to Moran Police Station and lodged an ejahar regarding the incident. An ejahar was written by a person whose name is not known to her. At present, her sister is 15 years of age. Her sister was taken to the hospital for medical examination and she

- accompanied her sister. Her sister was also produced before the Magistrate for recording her statement.
- 9) In her cross-examination, she testified that there is no signature on the FIR. She did not know what was written on the FIR. She further testified in her cross-examination that her house is situated by the side of the National Highway and the land is registered in her father's name. The accused person's house is also constructed over their land. The accused person along with his family has been residing on their land for a considerable period of time. The accused does not pay rent for the land. Besides the house, the accused also has a tea garden planted over their (PW-1's) land. PW-1 further testified in her cross-examination that their economic condition is not good, as most of their landed property is being occupied by the accused. Her father does not take care of the property as he is unable to work. The accused person behaves like the owner of the land. Their landed property is situated by the side of the national highway and the property is highly valuable. Earlier, some other people also wanted to purchase their landed property, but the accused and his family members did not allow those people to purchase their land. She maintains her family with her income as domestic help. She denied the suggestion that she foisted a case against the accused to wreck vengeance to facilitate the eviction of the accused from their land. She further testified that there are other residences near her house. she denied the suggestion that she omitted to state before the police that on 05-05-15, her younger sister called her over phone requesting her to visit her and when she went to home, her younger sister who was in tears, informed her that on 01-07-15, in the absence of their father, the accused came to their house and committed rape on her. She also denied that she omitted to state before the police that the neighbours informed her that her younger sister attempted to commit suicide after the incident. The remaining part of her crossexamination is denial of suggestions by the prosecution.
- 10) The victim X testified as PW-2 that the accused is related to her. The alleged incident took place on 01-07-15. On the day of the incident, at about 12:30 pm, she was alone in the house and her father went out for work. At that time, her elder sister was at Banipur in Dibrugarh. At the time of the incident, she went out to see whether any cow had entered into their campus and thereafter, she entered into her room. At that time, she did not realize that

the accused was inside the house. The accused gagged her with a dupatta from behind and laid her down on the bed. The accused undressed her and when she tried to scream, he gagged her with the dupatta and so she could not scream. The accused removed the garments from the lower part of the body and committed rape on her. At the time of the incident, he also tied her hands with the same dupatta with which he gagged her. After committing rape, the accused untied her hands and left her house. Thereafter, she went to the accused person's house situated near her house and informed his younger sister Hunmoni Ghatowar about the incident. Hunmoni replied that she will inform her mother about the incident. When the accused person's mother returned from work, she informed her about the incident and the accused person's mother asked her to visit her and stay overnight.

- 11) PW-2 further testified that she also informed the accused person's elder sister about the incident and his elder sister asked her to inform her if her menstrual period would stop and she suggested that she would provide her medicine in this case. The accused person's family members did not accept her version of the incident keenly. She informed her farther about the incident, but her father could not take any action, because he was an old and aged person with impaired vision. On the day of the incident, she stayed inside the house, as she was totally shaken and mentally depressed. On the next day of the incident, she called her elder sister Bohagi Ghatowar who used to stay at Dibrugarh. When her sister arrived, she narrated the incident to her sister and her sister informed her that she would arrange a meeting, but the meeting was not held. On the following day, she along with her sister Bohagi went to the police station and narrated the incident to police. The police recorded her statement and brought her to the hospital for medical examination. She was also forwarded to the Magistrate for recording her statement. Ext. 1 is her statement recorded by the Magistrate wherein Ext. 1(1) upto Ext. 1(3) are her signatures.
- 12) In her cross-examination, she testified that her house is adjacent to other houses within the same campus and there is no fencing between the houses. The accused as well as his family members are occupying their land by erecting a residential house and by planting a tea garden. She denied that she omitted to state before the police that she called her elder sister over phone. She denied that she omitted to state before the police that on the day

of the occurrence, she stayed inside her house as she was mentally depressed and totally shaken. She admitted that on the day of the incident, her uncle (peha) Makhan Murmur @ Durga died, but denied the suggestion that the accused was busy with the cremation which was going on from 10:00 am till the evening. She admitted in her cross-examination that they asked the accused as well as his family members to vacate their land and hand over the same to their father, but the accused and his family members refused. She also testified in her cross-examination that she did not hand over the dupatta to the police which was alleged to have been used by the accused at the time of occurrence. The remaining part of her cross-examination is denial of suggestions by the learned defence counsel, which will be discussed at the appropriate stage.

- 13) Smti. Rekha Boraik testified as PW-3 that the victim and the accused are known to her. On 04-07-15, at about 3:00 pm, when she was returning to her house from the accused person's house, she met the victim X on the way who called her to her house. She then went inside the victim's house and the victim informed her that the accused committed rape on her on 01-07-15 when she was alone at home during the daytime. She was in tears while she narrated the incident. PW-3 further testified that the victim also informed her that on 01-07-15, she went to the accused person's house and narrated the incident to his younger sister, but his younger sister did not respond. PW-3 further testified that on the same day, she informed the incident to the victim's elder sister Bohagi Ghatowar who resides in Banipur at Dibrugarh. On 05-07-15, Bohagi Ghatowar came and asked the victim about the incident. The victim was in a depressed condition. On the next day, she took the victim to the police station and lodged the ejahar. The police recorded her statement.
- 14) In her cross-examination, she denied that she omitted to state before the police that the victim X narrated the incident to her. She also denied that she omitted to state under Section 161 CrPC that on the day of the incident, when the victim narrated the incident to her, she was returning to her house and on the way, the victim X saw her from her house and called her to her house and then she went inside the victim's house. She also denied the suggestion that she omitted to state before the police that the victim informed her about the incident on 01-07-15 and that she went to the

accused person's house and narrated the incident to the accused person's younger sister Hunmoni Ghatowar. She also denied the suggestion that she omitted to state before the police that on 04-07-15, she informed about the incident to the victim's elder sister Bohagi Ghatowar who resides in Banipur at Dibrugarh. The remaining part of her cross-examination is denial of suggestions by the defence to the witness. This part of the cross-examination is not noteworthy.

- 15) Sri Rengtu Tanti testified as PW-4 that the accused and the victim are related to him. The incident took place about six months ago. He heard from the local villagers that the accused committed rape on the victim in her house. The victim resides in her house along with her father and her elder sister Bohagi Ghatowar resides at Banipur at Dibrugarh to pursue her work.
- 16) In his cross-examination, he stated that he did not witness the incident. On the day of the incident, the relative of the accused named Durga Murmur @ Magan died and after his death, the accused and he went to the house of Durga Murmur and the cremation rites continued from the morning till the evening on that day. He returned home from the cremation at about 11:00 am and while he was present in the cremation ground, the accused was also present there.
- 17) Smti. Rumila Tanti testified as PW-5 that the accused and the victim are known to her. The incident took place in the month of July, 2015. The victim resides in her village with her old father and her elder sister resides at Dibrugarh. She heard from her mother-in-law Rekha Boraik that the accused committed rape on the victim. Her mother-in-law went to the police station along with the relative of the victim. She learnt about the incident in the police station from her mother.
- 18) In her cross-examination, she testified that she had no personal knowledge about the incident.
- 19) The MO Dr. Mohsina Ahmed testified as PW-6 that on 06-07-15, she was serving as GDMO in the Department of Forensic Medicine at Assam Medical College & Hospital at Dibrugarh. On that day, the examined the victim on police requisition in connection with this case. On examination, she found the following:

On genital examination: Genital organs were healthy. Vulva is healthy. Hymen: One old tear at 3 O' clock position. Vagina and cervix is healthy.

Uterus not palpable per abdomen. No evidence of recent injury on her body or her private parts. Vaginal smears were taken from posterior fornix in and around the cervix result of which does not show any spermatozoa. Radiological finding:

- (1) X-ray elbow joint (AP view)- Epiphyseal union are completed;
- (2) X-ray wrist joint (AP view)- Epiphyseal union is not completed.
- (3) X-ray of shoulder joint (AP view)- Epiphyseal union is not completed.
- (4) X-ray of pelvis (AP view) Iliac crest not united.
- 20) On the basis of Physical examination, Radiological & Laboratory Investigation done on the victim X, the doctor was of the opinion that:
  - The actual age of the victim girl is above 14 years and below 16 years;
  - ii. There is no evidence of recent sexual intercourse on her person;
  - iii. There is no evidence of recent injury on her body or private parts.
- 21) The MO further testified that one old tear at 3 O' clock position was found in genital examination column 20(c) might be due to sexual intercourse or due to other physical activities, i.e., by cycling, swimming. The injury was not found within 72 hours prior to examination. Ext. 2 is the Medico-legal Report wherein Ext. 2(1) to Ext. 2(3) are her signatures.
- 22) In cross-examination, the MO testified when the girl was taken for examination, she did not state that after the incident, she was mentally broken and she tried to commit suicide. The victim stated before the MO that she informed the matter to the mother of the said boy and that she did not inform the MO that she told about the incident to other person also.
- 23) The IO SI Pratap Borgohain testified as PW-7 that on 06-07-15, he was posted at Moran Police Station as Second Officer. On that day, he received an FIR from Bohagi Ghatowar and he registered the same as Moran PS Case No. 220/15 under Section 4 of the POCSO Act and he embarked upon the investigation. Ext. 3 is the FIR and Ext. 3(1) is his signature. He recorded the statement of Bohagi Ghatowar and the victim in the police station. The victim was sent to Moran PHC for examination and thereafter, she was forwarded to the Assam Medical College & Hospital at Dibrugarh. The he produced the

victim before the Chairperson of CWC and forwarded her to the Court for recording her statement. Thereafter, he went to the place of occurrence and recorded the statements of witnesses. He prepared a Sketch-Map of the place of occurrence. Ext. 4 is the Sketch-Map and Ext. 4(1) is his signature. On the next day, the accused was arrested and forwarded to the Court. He also collected the Medico-legal Report and the statement of the victim recorded under Section 164 CrPC. On finding prima facie materials, he submitted Charge-Sheet against the accused under Section 4 of the POCSO Act. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature.

24) The contradictions reflected through the cross-examination of the IO is that the incident took place on 01-07-15 while the FIR was lodged on 06-07-15. He did not seize any garment or apparels from the victim. He did not obtain any age proof certificate during investigation. The victim did not mention in her statement under Section 161 CrPC that she intended to commit suicide. The complainant Bohagi Ghatowar did not mention in her statement under Section 161 CrPC that on 05-07-15, her younger sister called her over phone. Rekha Ghatowar did not mention in her statement under Section 161 CrPC that the victim X told her after the incident that she went to the accused person's house and informed his sister about the incident. Rekha Boraik also did not mention in her statement that the victim told her that on 04-07-15, she informed her elder sister Bohagi Ghatowar about the incident. Rekha Boraik has also did not mention in her statement under Section 161 CrPC that she informed about the incident to Bohagi Ghatowar over phone.

#### **ANALYSIS OF EVIDENCE:**

25) The testimony of the victim is consistent with her statement before the Magistrate. The delay in lodging the FIR casts a shadow of doubt over the veracity of the victim's evidence. According to her, the incident took place on 01-07-15 and the ejahar was lodged on 06-07-15. If her sister Bohagi Ghatowar had a phone and if she called her sister on a later date and informed her about the incident on 05-07-15, then what prevented the victim to call her sister on an earlier date and inform her about the incident. Another discrepancy in the evidence is the non-examination of the victim's father. The victim's father was the best person who could have testified that when he was absent from his house, taking the advantage of his absence, the accused entered into his house. This is a serious offence and it has to be proved

- beyond reasonable doubt. If the victim's father was old, then how he goes out for work and if her father was fit enough to go out for work, then what prevented the IO from recording the statement of the victim's father.
- 26) Moreover, the conduct of the victim after the incident also casts a shadow of doubt over the veracity of her evidence. It is not that the victim was hesitant to inform about the incident of rape to any other person apart from her sister. Immediately after the incident, the victim went to the accused person's house and informed his younger sister and his sister-in-law about the incident. Again, she informed about the incident to another woman Rekha Boraik on 04-07-15. Doubt creeps into one's mind as to why the victim did not inform her own sister about the incident till 05-07-15. If the victim was not hesitant to inform the accused person's sister, sister-in-law and PW-3 about the incident, then what prevented her from informing her own sister about the incident immediately after the incident? Although the statement of the victim under Section 164 CrPC is consistent to her testimony, yet her evidence does not inspire confidence due to her own conduct. Further, the crossexamination of the IO depicts that the victim omitted to state under Section 161 CrPC that she attempted to commit suicide nor did her sister state that the victim called her over phone on 05-07-15. Rekha Boraik also omitted to state before the IO that she informed Bohagi Ghatowar about the incident. Rekha Boraik also omitted to mention the most important fact that on 04-07-15, the victim informed her about the incident and thereafter, she informed the victim's elder sister about the incident over phone. The testimony of Bohagi Ghatowar and Rekha Ghatowar has been contradicted by the IO that Rakha informed Bohagi over phone about the alleged incident. Further, Bohagi was informed about the incident and this impelled her to lodge the ejahar with the police. Another contradiction elicited through the crossexamination of Rekha Boraik is that she omitted to state before the IO that the victim told her that after the incident, she went to the accused person's house and informed his elder sister about the incident. The evidence of Rekha Boraik is replete with contradictions and this casts a shadow of doubt over the veracity of her evidence.
- 27) The evidence of the informant PW-1 depicts that the neighbourers informed her that her younger sister tried to commit suicide after the incident. This depicts that the neighbourers already learnt about the incident of rape. The

evidence of the victim also depicts that she called her elder sister on the next day of the incident and narrated the incident to her elder sister. Her elder sister Bohagi assured her that she would arrange a meeting in the village, but the meeting was not held. Moreover, the evidence depicts that the victim was not ashamed of the fact that the neighbours learnt about the incident. On the contrary, she was wary of the fact that her elder sister arranged a meeting which finally did not take place. So the delay and hesitation to lodge the FIR remained unexplained. Mover, the victim stated that the ejahar was lodged on the next day, while her elder sister testified as PW-1 that she was informed about the incident on 05-07-15. PW-1 and PW-2 stated that the incident took place on 01-07-15. The evidence of Rekha Boraik also depicts that the incident took place on 01-07-15 and the victim informed her about the incident on 4<sup>th</sup> and her sister Bohagi was informed about the incident on 5<sup>th</sup>. In view of my foregoing discussions, it is thereby held that there are too many contradictions to fasten the accused person with the guilt of rape.

- 28) The victim also testified that her father is an elderly person and he is visually impaired, while the same victim testified that her father went out for work on the day of the incident. The victim insisted that she informed her father about the incident.
- 29) This case is indeed replete with contradictions and discrepancies. If the victim informed her father about the incident, the why her father was not summoned as a witness in this case. Moreover, if the statement of the victim remains self contradictory, because she stated that her father went ouf for work and thereafter, the incident took place when she was alone at home. The opinion of the MO depicts that no injuries were found up to 72 hours from the time when the victim was brought for examination and prior to that. There was no evidence of recent sexual intercourse on her person. However, there was an old tear at 3 O' clock position found on genital examination which may be due to sexual intercourse or due to other physical activities by cycling, swimming, etc.
- 30) The evidence of the doctor also does not confirm sexual assault on the victim. The tear detected o her hymen is an old tear and there was no evidence of recent sexual intercourse on her person. There was also no evidence of recent injury on her body or private parts.
- 31) The victim's testimony as PW-2 depicts that she struggled with the accused

and he tied her and forcefully committed rape on her. The absence of forceful sexual intercourse belies her evidence. The old tear on her hymen does not affirm that she was sexually assaulted by the accused on 01-07-15.

- 32) Moreover, her evidence that the accused tied her hands with the dupatta and gagged her with the same dupatta while committing rape is not creditworthy.
- 33) Considering the fact that the case is replete with contradictions and considering the conduct of the victim after the incident, it is held that the victim's evidence does not inspire confidence. The prosecution failed to prove that the accused committed penetrative sexual assault on the victim. Thereby, the accused is acquitted from the charges under Section 4 of the POCSO Act on benefit of doubt and is set at liberty forthwith.
- 34) I have carefully considered whether the victim deserves compensation. Considering the entire case record and the documents, this case is not referred for compensation under the Victim's Compensation Scheme, 2012.
- 35) The cross-examination of PW-1 and 2 depicts that there is an acrimonious relationship between the accused and the victim's family members, because the accused person has been occupying their land and have erected a house on their land belonging to the victim's family. This fact is also taken into consideration.

Judgment is signed, sealed and delivered in the open Court on the 12<sup>th</sup> day of April, 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**

# List of witnesses:

- 1. PW-1 Smt. Bohagi Ghatowar;
- 2. PW-2 The victim 'X';
- 3. PW-3 Smti. Rekha Boraik;
- 4. PW-4 Sri Rengtu Tanti;
- 5. PW-5 Smti. Rumila Tanti;
- 6. PW-6 Dr. Mohsina Ahmed; and
- 7. PW-7 SI Pratap Borgohain.

# List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Medico-legal Report;
- 3. Ext. 3 Ejahar;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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