# 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. 01/2015 corresponding to GR Case No. 68/2015 & Kheroni Police Station Case No. 32/2015 Under Section 376(2) (i) of IPC and 6

of the POCSO Act.

State of Assam

Versus

Shri Dhan Bahadur Dorjee

Name of informant/complainant:

Smti Debumaya Devi

Name of the accused person facing trial:

Shri Dhan Bahadur Dorjee

S/O Lt. Debraj Dorjee

Vill: Jirin Borholi P.S : Kheroni

District: Karbi Anglong, Assam.

## Advocates appeared:

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

For the defense : Mr Arnab Dutta, Legal Aid Counsel.

Date(s) fixed for Argument : 14.11.2018/20.11.2018.

Date(s) fixed for Judgment : 20.11.2018/30.11.2018/04.12.2018.

N.B.: Judgment could not be pronounced and delivered on date fixed due

to arising of Law point.

#### **JUDGMENT**

- 1. It is a case of aggravated penetrative sexual assault alleged to have been committed by the accused person who is the father of the victim child.
- 2. The prosecution case in brief as appeared is that on 12.03.2015, the informant Smti Debamaya Devi lodged a written ejahar with Kheroni Police Station stating inter alia that on 04.03.2015 at about 10:00 PM, her husband-accused, Shri Dhan Bahadur Dorjee committed rape upon her victim daughter aged about 16 years old forcibly while she was not available at her house. On her return, her victim daughter told her everything about the incident. On receipt of the ejahar, O/C Kheroni Police Station registered a case vide Police Station Case No.32/2015 under sections 376 (2) (f) of IPC R/W Sec 6 of the POCSO Act, 2012. On completion of investigation, I.O. submitted the charge-sheet against the accused, Shri Dhan Bahadur Dorjee U/S 376 (2) (f) of IPC R/W Sec 6 of POCSO Act, 2012.
- 3. The accused person is facing trial from jail Hajot. Copy was furnished to him. On his inability to engage any lawyer to defend him, Mr. Arnob Dutta, an advocate of Diphu Bar Association was appointed as Legal Aid Defence Counsel by my predecessor. This court being Special Court took cognizance under sections 376(2)(j) of the IPC read with section 6 of the POCSO Act. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, I found there is ground for presuming that the accused committed offence under section 6 of the POCSO Act and accordingly charge was framed. The particular of the offence charged was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial, Prosecution has examined as many as 8 (eight) witnesses. The accused person has been questioned under

section 313 of Cr.P.C. The defense has examined none. Plea of defense is of total denial.

## 5. **Point for determination is:-**

Whether the accused person on the same date, time and place caused aggravated penetrative sexual assault to the victim?

## 6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed doubts. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

7. PW-1 is the victim who has stated in her testimony that the accused is her father and informant is her mother. The incident occurred on 04.04.2015. At present she is 18 years old. On the night of occurrence, her mother was not available at their house and on that night, she was staying at her house along with her father, one younger brother and one younger sister. She and her younger sister slept in a room together while her father and younger brother slept in another room. The door of her room was made of bamboo. Before going to sleep, she tied a bamboo stick with the door. At about 12 midnight, she woke up on touching her body by someone and found her father hugging

her and touching her chest (including breasts). On this, she obstructed her father, but on threat to kill her forcibly the accused made her naked and made sexual intercourse with her. When her sister woke up, her father left the room and went to his room. Her father threatened to kill her if she would disclose the matter to anybody. After attending natural job of urine, she went to her room for sleeping. Then the accused again entered into her room and made sexual intercourse with her. In the morning, she reported the mater to her friend named Putuli Timungpi and aunt (Jethima). Her father left the house in the said morning. In the evening of the next day, she told the incident to her mother over phone. As Karbi Anglong was declared "Bandh" by some organization, her mother could not come immediately. On 07.04.2015 her mother returned to the house and lodged the ejahar in the police station. The police got her statement recorded thought the Court. Ext.1 is her statement and Ext.1 (1) to Ext. 1(3) are her signatures.

8. PW-2 is Mrs Debu Maya Dorjee who has stated in her testimony that she is the informant of this case. The accused is her husband while the victim is her daughter. The occurrence took place in the year 2015. On the day of occurrence, she was not present in her house. On that day, she went to the house of her elder daughter situated at Sildubi. On the day of occurrence, her husband, the victim and two minor children were present at their house. On the following day of the occurrence, the victim over telephone requested her to come home back immediately for some urgent matters. On that day, it was "Bandh"(strike) and therefore, she could not come to her house. On the following day, she came home and her victim-daughter informed her that on the night of occurrence while she was sleeping in her room, the accused forcibly made sexual intercourse with her. After her arrival, she found her husband at the house. On her reaching, her husband fled away. Thereafter, on request of the victim, she lodged written ejahar with Kheroni Police Station. At the time of the occurrence, her victim daughter was 16 years old. Police got her victim daughter medically examined and her statement recorded in the Court.

- 9. PW-3 is Sri Bal Bahadur Dorjee who has deposed that he knows the informant who is his sister-in-law. The accused is the husband of the informant and the victim is the daughter of the informant. The occurrence took place in the night of 04.03.2015. On the night of occurrence, he was not available at his residence. His residence is situated near the house of the accused. After three days of the occurrence, he came back home and then his wife informed him that the victim told her about the occurrence. A friend of the victim with whom she shared about the occurrence informed him that the accused made sexual intercourse with the victim forcibly.. Thereafter he visited the residence of the accused, but he did not find him there. He was informed that after the occurrence, the accused fled away. After one month of the occurrence, one night the accused came home and at that time, police was informed. Police arrested the accused.
- 10. PW-4 is Smti Goma Devi deposed that she knows the victim, the accused and the informant. The occurrence took place in the month of March at night. One Putuli Timungpi who is the friend of the victim informed her (PW-4) that on the night of occurrence, the accused raped the victim. On being asked, the victim also told her that her accused-father made sexual intercourse with her forcibly in that night.
- 11. PW-5 is Dr Karik Kropi is the Medical Officer who told that on 13.3.2015 she was working at Diphu Civil Hospital as Senior Medical and Health Officer. On that day, she examined Miss Maina devi in connection with Keroni Police Station Case No.32 of 2015. On examination, she found no external injury on the body of the victim and found hymen torn. She also found tenderness on vagina examination. Urine test for pregnancy was done and no spermatozoa was seen on the vagina. According to radiological report on X-ray, the age of the victim was below eighteen. Ext-2 is the medical report.

- 12. PW-6 is Sri Padam Bahadur Pradhan who has deposed in his evidence that he knows the informant and the accused of this case. The occurrence took place in the year 2015. After the occurrence, the uncle of the victim convened a village meeting on a Sunday in his house and in that meeting, he and other villagers were present. In the meeting, the victim informed them that her father keeping a dao on her neck, raped her. On the night of the occurrence, the wife of the accused was not present at the house and on that night, there was no minor brother and sister present except the victim. The victim also informed them that after the occurrence, the accused fled away. Hearing the version of the victim, the villagers advised the mother of the victim to lodge an ejahar against the accused. After one month of the occurrence, the villagers managed to apprehend the accused and handed him over to police. At the time of occurrence, victim was 12/13 years old.
- 13. PW-7 is Shri Rongsing Ronghang who has deposed in his deposition that he knows the informant, the victim and the accused person. The occurrence took place in the year 2015. His house is situated near the house of Shri Barbahadur Dorjee who is the paternal uncle of the victim. Shri Barbahadur Dorjee convened a meeting in his house and he was invited in the said meeting along with other villagers. Said parental uncle informed that after the occurrence in the night itself, the victim came to his house and told him that the accused taking advantage of absence of her mother committed rape on her. Police recorded his statement. On being asked, the victim told him that on the night of occurrence, her accused-father raped her taking the advantage of absence of her mother. She also informed PW-6 that on the night of occurrence, only her minor brother and sister were present in the house. Seeing the gravity of the crime, the villagers advised the mother of the victim to inform police.
- 14. PW-8 is Ms Vanrohlim Hmar who is the investigating police

officer. She has deposed in her evidence that on receipt of the ejahar from the informant on 12.3.2015, the O/C of Kheroni Police Station registered a case vide No.32 of 2015 under section 376(2)(f) of IPC R/W Sec. 6 of the POCSO Act and endorsed her for investigation of the same. She examined the informant in the police station and recorded the statement of the victim there. She also got the victim medically examined. She visited the place of occurrence, prepared the sketch map of the place of occurrence. Ext-3 is sketch map and Ext-3(1) is my signature. I got the statement of the victim recorded in Hamren Court. She arrested the accused person and after medical examination of the accused, she forwarded him to the Court. She also recorded the statements of the witnesses at the place of occurrence. She collected the statement of the victim recorded in the Court and medical report. Ext.4 is the charge-sheet and Ext.4(1) is her signature.

15. It is a case of aggravated penetrative sexual assault. Before knowing about aggravated sexual assault we must know first about penetrative sexual assault. It is defined under section 3 of the POCSO Act which reads thus:-"3. Penetrative sexual assault.-

A person is said to commit "penetrative sexual assault" if-a. he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or b. he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or c. he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or d. he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

16. "Aggravated penetrative sexual assault" is defined under section 5 of the POCSO Act. According to section 5 (I) whoever commits

penetrative sexual assault on the child more than once or repeatedly, it falls in category of aggravated penetrative sexual assault.

- 17. For attracting the section 6 of the POCSO Act, the victim must be a child. According to section 2(d) of the POCSO Act any person who is below the age of 18 years is called child. According to the victim marked as PW-1, she was about 16 years at the time of occurrence. PW-2 is the mother of the victim. Parents are considered to be right persons who know the actual age of their children. According to her, at the time of occurrence, the victim was 16 years old. According to PW-6 who is the co-villager of the accused, the victim was 12/13 years old at the time of occurrence. No birth certificate or school certificate showing date of birth was seized or submitted. PW-5 is the medical officer who examined the victim. On examination of the victim he opined that the victim was below 18 years at the time of occurrence. Taking all aspects into consideration I have come to conclusion that at the time of occurrence, the victim was below 18 years. Hence at the time of occurrence, the victim was child.
- 18. Facts remain that the occurrence took place on the midnight in the house of the accused and in the following morning the victim informed the incident to her friends and neighbourer and asked her mother who was in the house of elder daughter at Sildobi to come home back immediately. Subsequently a Mel was convened in the village where in the victim told about the occurrence. In this case the victim is material and star witness. The entire prosecution case lies on her evidence. There is corroborative evidence that on the fate night the accused, victim and two minor children were in the house. The victim marked as PW-1 has clearly stated in her evidence that the accused went to the bed where she was sleeping with her minor sister and made sexual intercourse with her forcibly though she objected. Her evidence also shows that on the fateful night the accused made sexual intercourse with her twice. She has also stated that she informed her friend Putuli Timungpi about the occurrence while she (Putuli) came to their house.

- 19. PW-3 who is brother of the accused is most important witness. His evidence shows that on the fateful night he was not in his house and after 3 days from date of occurrence he came home back. On reaching home, his wife informed him that the accused showing dao made sexual intercourse with the victim forcibly. On being asked the girl with whom the victim shared about the occurrence informed him that the victim had told her that the accused forcibly made sexual inter course with victim.
- 20. PW-4 Smt Goma Devi who is sister of the informant has stated in her evidence that Putuli a friend of the victim informed her that on the night occurrence the accused made sexual intercourse with her forcibly. According to PW-5 and PW-6 who are neighbourers of the accused, after occurrence a Mel was convened wherein the victim informed that the accused made sexual with her forcibly on the fateful night.
- 21. From evidence of medical officer and Ext-2 it appears that on examination of the victim he that there was evidence of sexual intercourse and that her hymen was torn. It appears that the occurrence took place on the night of 04-03-2015 but the victim was medically examined on 13-3-2015.
- 22. It has been submitted by the learned defence counsel that long delay of 9 days in filing of ejahr is fatal the prosecution. The ejahar was lodged on 12-03-2015 though the occurrence took place on the night of 04-03-2015. There was a delay of about 9 days. Ext-1 is the statement of the victim recorded in the court during investigation under section 164 of the CrPC. It shows that the informant came home back on 07-03-2015. It is also evident that there was a Mel convened in the village for settling the matter. A criminal case cannot be out-rightly thrown away on mere ground of delay. Of course in criminal case delay is avoided because it gives opportunity to the informant to report the matter in exaggerated and distorted form. It is case lodged by the

informant against her husband who has been alleged of making sexual intercourse with her 16 years old daughter forcibly. The informant is mother five children from side of the accused. Indian people are very conservative in case of domestic matter like the matter in question. Sometimes delay in lodging of a criminal case leads to destroy of evidence. Victim was an unmarried girl. After 9 days from the alleged date of rape, it would be possible medically to ascertain as whether the victim was subject to sexual intercourse. For the reason stated above I find no force in the submission made above by the learned defence counsel.

- 23. Ext-1 gives some different facts what the victim has deposed in her evidence. Ext-1 is totally silent that the accused made sexual intercourse with the victim twice forcibly. Of course it shows that the accused person forcibly made sexual intercourse for one time. It also shows that the accused was in the house after occurrence for three days till coming of the informant home back. In this case the victim is the most vital and material witness. There is no independent witness. Normally such occurrence takes place in isolated place. Practically entire prosecution lies on the evidence of the victim. If evidence is found to be doubtful, the prosecution case will not stand.
- 24. There are some discrepancies and contradicts specially in the evidence of the victim but on material point there is no contradiction so far as subjecting the victim to sexual intercourse forcibly by the accused is concerned. The accused is person having age of 40 years. It is evident that on the fateful night there was no adult member in the house. The accused is a man strong physique having capacity to make sexual intercourse.
- 25. It has been observed in the case of **State of U.P. v. Chhotey Lal** reported in "(2011) 2 SCC 550" regarding evidence of the prosecutrix that the evidence of the prosecutrix needs to be analysed and examined carefully because a woman who is a victim to sexual

assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

26. What has been observed in the case of Ramprasad vrs State of Maharashtra, reported in "2018 SCC OnLine Bom 1315"-regarding section 29 of the POCSO Act is reproduced below:-

"Once such а conclusion is arrived at, the presumptionunder Section 29 of the POCSO Act comes into operation and it has to be presumed that the acts against the appellant (accused) were indeed committed by him until the contrary stood proved. Therefore, the burden becomes heavier on the defence in such cases. It is required to be examined whether the evidence on record indicated that the appellant (accused) was able to rebut the presumption to demonstrate that the prosecution case was not made out. The presumption can be rebutted by showing preponderance of probabilities the defence that on raised by the accused was made out."

27. The plea of defence is total denial. The defence has brought no evidence into record shows as to why the informant brought this false case against the accused. In the backdrop of discussion made

above I find no way to discard and disbelieve evidence of the victim that the accused committed penetrative sexual assault on her forcibly on the fateful night for one time. Hence I find that the prosecution has succeeded in establishing its case under section 4 of the POCSO Act against the accused.

#### ORDER.

- 28. In the result, I find the accused person guilty under section 4 of the POCSO Act and accordingly he is convicted.
- 29. On the point of sentence the accused is heard and to that effect his statement is recorded. It has been submitted by the learned defence counsel that there is evidence that the accused was not involved in such occurrence earlier. He has further submitted that it is a fit case wherein Court may extend leniency in sentencing the accused. He also submitted that the presence of the accused in his family is very much essential as he is only earning member of his family consisting of eight persons. On the other hand Mr. D.K.Dutta, Ld. Public Prosecutor has submitted that the accused needs to be punished exemplarily and detergent. There is no evidence that the accused was earlier by the court. The accused person belongs to Nepali community. Early marriage is prevailing in Nepali community. The marriage between the accused and the informant is early marriage. Accused is a mature person who committed the offence in question in cool brain as reflected from the fact of the case. It is a case wherein a minor daughter was subjected to penetrative sexual assault by her own father forcibly taking advantage of absence of her mother in the house in the midnight while she was on deep sleep. The fact of case in my hand again proves that women are not all safe and secured even within their own house in presence of their father. The stigma sustained by an unmarried minor girl after she was being raped cannot be forgotten in whole life. It also very badly affects the victim mentally. That apart the rape victim is boycotted by the

society. I am doubtful that rest of the family members will take the accused person in confidence for leaving with him in future.

30. Regarding object of the POCSO Act, the Hon'ble Apex has observed in case of *Eera v. State (NCT of Delhi)* reported in "(2017) 15 SCC 133" thus :-"20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act.".

31. In **Surjit Singh Vs. Nahara Ram and others (2004)6 SCC 513=AIR 2004 SC 4122** it was held "The law regulates social interests, arbitrates conflicting claims and demands. Security of persons

and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly there is a cross-cultural conflict where living law must find answer to new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, laws as a corner stone of the edifice of 'order' should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public system in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc."

- 32. Taking all aspects into consideration including the observations made in the case Law cited above I find no force in the submission made by Ld. Lawyer appearing on behalf of the accused person. In my opinion the accused person needs to be punished exemplarily. Accordingly, I do hereby order the accused person to suffer RI for life and to pay a fine of Rs. 5,000/- id SI for two months. Let a certified copy of Judgment be supplied to the accused person at free of cost. Let a copy of Judgment be supplied to the District Magistrate Karbi Anglong, Diphu.
- 33. It is reflected that at present entire family of the accused depending on the earning of his wife who is the informant of this case. In such a case the victim need extreme financial assistant for rehabilitation of herself and her family members. Now victim certainly has become major. Hence, I recommend adequate compensation under

victim compensation scheme as laid down under section 357 (A) of the Cr.P.C be awarded to the victim immediately by the District Legal Authority, Karbi Anglong, Diphu. Inform the Secretary DLSA, Karbi Anglong, Diphu accordingly.

34. Given under my hand and seal of the Court on this 04<sup>th</sup> December, 2018 at Diphu, Karbi Anglong.

Dictated and corrected by me.

Special Judge,

Special Judge,

Karbi Anglong, Diphu.

Karbi Anglong, Diphu.

Dictation taken and transcribed by me.

Stenographer Grade-I.

## **APPENDIX**

## Prosecution witnesses:

PW-1 Victim

PW-2 Smti. Debu Maya Dorjee.

PW-3 Shri Bal Bahadur Dorjee.

PW-4 Smti. Guma Devi.

PW-5 Dr. Karik Kropi.

PW-6 Shri Padam Bahadur Pradhan.

PW-7 Shri Rongsing Ronghang.

PW-8 Smti. Varohlim Hmar.

<u>Defense witnesses:</u> Nil.

Prosecution exhibits:

Ext.1- Statement of the victim girl.

Ext-2- Medical Report.

Ext-3- Sketch map of PO.

Defense exhibits: Nil.

Special Judge,

Karbi Anglong, Diphu.