# CAUSE TITLE POCSO Case No. 60/15

Informant: Sri Kishore Munda,

S/o- Late Mohan Munda, R/o- Lepetkata Jungle Line,

PS- Barbaruah, District- Dibrugarh.

Accused: Sri Amar Nayak,

S/o- Late Ramesh Nayak, R/o- Lepetkata Jungle Line,

PS- Barbaruah, District- Dibrugarh.

# ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Mr. A Rob, learned Legal Aid Counsel.

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

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 60/15 G.R. Case No. 2091/15

> > State of Assam

-Vs-

Sri Amar Nayak

Charges: Under Section 4/18/8 of POCSO Act.

Date of evidence on : 31-05-16, 29-06-16, 29-07-16 and 13-03-16.

Date of argument : 07-05-18. Date of Judgment : 21-05-18.

### **JUDGMENT**

- 1) The prosecution case in a nutshell is that on 31-07-15, at about 3:00 pm, in the absence of Sri Kishore Munda (hereinafter the informant), his daughters, the fourteen years old victim 'X', nine years old Bandana Munda and eight years old Naina Munda went to bring goats. At that time, Sri Amar Nayak (hereinafter the accused) in his attempt to commit rape on the victim, pulled the victim and uttered 'I love you'. As a result, the victim 'X' sustained injuries in the scuffle. The neighbours witnessed the incident and they chased the accused. An ejahar regarding this incident was lodged by the informant with the police at Lepetkata Outpost and a GD Entry No. 568 dtd. 31-07-15 was registered and the FIR was forwarded to Barbaruah Police Station which was registered as Barbaruah PS Case No. 209/15 under Sections 376/511 of the Indian Penal Code (IPC in short) and SI Sushil Gogoi was endorsed with the investigation.
- 2) The investigating officer (IO in short) embarked upon the investigation and he recorded the statements of the witnesses and prepared Sketch-Map of the place of occurrence. He forwarded the victim 'X' for medical examination and also for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). On finding prima facie materials against the accused, the IO submitted Charge-Sheet against the accused under Sections

- 376/511 IPC, read with Section 8 of the POCSO Act.
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Sections 4/18/8 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of nine witnesses including the IO and exhibited several documents, while the accused cross-examined the witnesses to refute the charges.
- 5) I have heard the arguments forwarded by the learned counsel for both the sides.
- 6) To deiced the case in its proper perspective, the following points are apposite for proper adjudication of this case:
  - i. Whether on 31-07-15, the accused attempted to commit penetrative sexual assault on the minor victim 'X'?
  - ii. Whether at the same time and place, the accused committed sexual assault on the minor victim 'X'?

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

- 7) To properly adjudicate this case, it is necessary to delve into the evidence.
- 8) The victim 'X' testified as PW-1 that the incident took place on 30-07-15. On that day, she along with her sisters Bandana and Naina went to the field to bring back their goats. At that time, she saw the accused following them. When they returned from the field, the accused caught hold of her from the backside and uttered 'I love you..... I love you'. He touched her breasts and pulled her skirt and then she and her sisters screamed and the farmers working in the paddy field came to their rescue and drove away the accused. They also assaulted him and flung him into the drain. The accused then caught her and she tried to escape and she fell on the ground above the gravel and sustained injuries on her abdomen and knees. The villagers handed the accused over to the police. Then she returned to her house and she narrated the incident to her parents. On the same day, she went to the police station along with her father and the police recorded her statement and forwarded her to Assam Medical College & Hospital at Dibrugarh for medical examination. She was also produced before the Magistrate who recorded her statement. Ext. 1 is her statement before the Magistrate and Ext. 1(1) and Ext. 1(2) are her signatures.

- 9) In her cross-examination, she testified that the incident took place on a busy public road where several vehicles ply. She admitted that there was acrimonious relationship between her family members and the accused person.
- 10) It is clear from the evidence of the victim, PW-1, that the accused did not attempt to commit rape on the victim. No overt act can be ascribed to the accused that he attempted to commit penetrative sexual assault on the victim. The victim's testimony depicts that the accused groped her breasts and he expressed his love for her. Her evidence depicts sexual assault on the victim.
- 11) PW-1's father is the informant and he testified as PW-2 that the incident took place during the time of vacation. He was not at home at the time of the incident. When he returned to his house at about 3:00 pm, he noticed that the public assaulted the accused and he learnt from his daughter that when she went to bring back the goats along with her sister, the accused caught her and molested her. They handed the accused over to the police. On the same day, his brother Binod Munda wrote the FIR and he affixed his signature on the FIR. Ext. 2 is the FIR and Ext. 2(1) is his signature.
- 12) In his cross-examination, PW-2 testified that Ext. 2 was written in the police station and he did not know what was written in the Ext. 2.
- 13) The informant's evidence is scrutinized carefully. He has stated that the accused molested his daughter, but he did not describe the act of the accused. However, his evidence depicts that the accused misbehaved with his daughter and he was apprehended by the public and assaulted.
- 14) The evidence of PW-1 and 2 is supported and corroborated by the evidence of Smti. Bandana Munda who testified as PW-3 that the victim 'X' is her elder sister. The incident took place about a year ago. On the day of the incident, at about 4:00 pm, she along with her elder sister 'X' and her younger sister Naina Munda went to the nearby field to bring back their goats. While they were returning from the field, the accused caught 'X' from backside and touched her breasts and tried to pull her skirt. Then she along with her sister raised alarm. Some farmers, who were working in the paddy field, came to her rescue and apprehended the accused. At that time, the accused fell down into the nearby drain. When the farmers chased, he ran away shouting 'I love you'. I love you'. PW-3 further testified that when the accused caught her

elder sister, her sister sustained injuries on her abdomen and knees at the time when she tried to escape from the accused person's clutches. The villagers kept the accused confined for a while and they returned to her house and narrated the incident to their parents. The villagers took the accused to the police station and she along with her sister 'X' went to the police station.

- 15) The evidence of PW-1, 2, 3 and 4 clearly depicts that when three sisters went to bring back the goats, the accused committed sexual assault on the victim 'X'.
- 16) Smti. Naina Munda testified as PW-4 that the victim 'X' is her elder sister. The incident took place about a year ago. On the evening of the incident, she went with her sister 'X' and Bandana Munda to the nearby field to bring back the goats from the field. While they were returning from the field, the accused caught her sister 'X' from the backside and then she (PW-4) was terrified and she ran away towards her house. Later, she came to know that the accused was apprehended by the villagers and handed over to the police. She along with her sister 'X' and Bandana went to the police station on the same day.
- 17) PW-4 did not witness the overt act of the accused, but she was present at the time when they went to bring back the goats and when the accused caught the victim from the backside. Thereafter, PW-4 was terrified and she ran away to her house.
- 18) The evidence of PW-1, 2, 3 and 4 is supported by the evidence of Sri Binod Munda who testified as PW-5 that he is the paternal uncle of the victim 'X'. The incident took place in the month of July, 2015. On the evening of the incident, when he returned from work, he learnt from the victim's father that while the victim 'X' along with her sister went to bring back the goats, the accused caught and tried to molest her. The nearby people working in the field, caught the accused and handed him over to the police. In the evening, he went to the police station and the police recorded his statement. When asked the victim about the incident, she informed him that the accused caught her while she went to the field along with her sister, but she somehow managed to escape.
- 19) The evidence of PW-1, 2, 3, 4 and 5 is corroborated and supported by the evidence of PW-6 Sri Bhaskar Bhumij who testified that the incident took

place in the month of July, 2015. On the evening of the incident, at about 4:00 pm, he returned from duty and learnt from his family members that the accused tried to commit misdeed with the victim 'X' while she went to the nearby field along with her sister. He went to see the accused person who was apprehended and kept confined by the villagers. At that time, the accused went towards the victim 'X' escaping from the villagers. Then he caught the accused and went to the police station along with the victim's father and other villagers and handed him over to the police. The victim's father lodged an ejhar.

- 20) Scrutinizing the evidence of PW-5 and 6, it can be held that they heard about the incident. PW-5 heard about the incident from the victim, while PW-6 himself caught the accused when he went towards the victim by escaping from the clutches of the villagers who kept him confined. This part of the evidence is the latter part of the incident.
- 21) The evidence of PW-7 depicts the latter part of the incident.
- 22) Sri Shankar Mura has testified as PW-7 that the accused person and the victim 'X' are known to him. The incident took place about a year ago. On the day of the incident, at about 4:00 pm, he was returning from duty and he saw the accused being held captive by the villagers in the paddy field near the victim's house. He also saw the victim 'X' at the place of occurrence and she was in tears and when he asked her as to why she was crying, she informed him that when she went to see goats in the nearby field along with her sisters, the accused tried to molest her by holding her from the backside. Then the villagers asked him (PW-7) and Bhaskar Bhumij to take the accused to the police station. At that time, the victim's father also arrived and took the accused to the police station. The victim also went to the police station.
- 23) This witness reached the spot immediately after the incident and at that time, the victim was crying and then he and Bhaskar Bhumij took the accused accompanied by the victim's father and also the victim.
- 24) At this juncture, it is pertinent to mention that the cross-examination of the witnesses is not noteworthy. No contradiction could be elicited on cross-examination of the witnesses and the evidence of all the witnesses could not be impeached by cross-examination.
- 25) Sri Mohan Rao testified as PW-8 that the accused and the victim are his neighbours. The incident occurred about a year ago. On the day of the

incident, at about 4:00 pm, while he was going from his house, he saw the accused being taken by the villagers towards the police station. Then he immediately went towards him and learnt from the villagers that the accused tried to misbehave with the victim when she was proceeding along with her sisters towards the field. He also learnt that the victim sustained injuries on her leg when she tried to save herself from the accused person.

- 26) Thus, it can be safely held that the evidence of the witnesses are corroborative. There is clinching evidence that the accused person is complicit.
- 27) The IO is an official witness and his evidence as PW-9 depicts that on 31-07-15, while serving as In-Charge at Lepetkata Outpost, he received an ejahar from the informant and he registered Lepetkata Outpost GDE No. 568 dtd. 31-07-15 and forwarded the FIR to Barbaruah Police Station and this case was registered and the accused was already produced by the informant along with villagers in the outpost and he took custody of the accused. He conducted investigation and recorded the statements of the witnesses. On finding prima facie materials, he submitted Charge-Sheet against the accused. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature.
- 28) He denied the suggestion that the victim was not above 19 years at the time of the incident. No evidence regarding the age of the victim could be produced by the defence. It is thereby held that the victim was a minor at that time of the incident.
- 29) It has already been held in my foregoing discussions that the evidence of the victim and her sisters who were present at the spot at the time of the incident, does not implicate that the accused attempted to commit penetrative sexual assault on the victim. There is a hint that the accused lifted her skirt, but no overt act could not ascribe to the accused that he attempted to commit penetrative sexual assault. On the other hand, the evidence of PW-1, 2, 3 and 4 proves beyond a reasonable doubt that the accused sexually assaulted the victim because he touched her breasts. The victim has categorically stated that the accused touched her breasts and he also uttered 'I love you ... I love you'. The evidence of the witnesses are corroborative. The oral and documentary evidence are also corroborative and supportive.
- 30) In view of my foregoing discussions, it is thereby held that there is clinching

evidence that the accused is complicit. Thereby the accused is held guilty of offence under Section 8 of POCSO Act.

31) I have heard the accused on the point of sentence. He has pleaded innocence.

## **SENTENCE**:

- 32) The accused Sri Amar Nayak is convicted under Section 8 of the POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 3 (three) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo RI for 1 (one) month. The period of detention of the accused during investigation and trial is set off with his custodial sentence.
- 33) Furnish free copies of judgment to the accused and to the District Magistrate.

  Judgment is signed, sealed and delivered in the open Court on the 21<sup>st</sup> day of May, 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

> > Contd.

## **APPENDIX**

#### List of witnesses:

- 1. PW-1 The victim 'X';
- 2. PW-2 Sri Kishore Munda;
- 3. PW-3 Smti. Bandana Munda;
- 4. PW-4 Smti. Naina Munda;
- 5. PW-5 Sri Binod Munda;
- 6. PW-6 Sri Bhaskar Bhumij;
- 7. PW-7 Sri Shankar Mura;
- 8. PW-8 Sri Mohan Rao; and
- 9. PW-9 Sri Sushil Gogoi.

## List of Exhibits:

- 1. Ext. 1 Statement of the victim 'X' recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Sketch-Map;
- 4. Ext. 4 Extract copy of Lepetkata OP GDE No. 568 dtd. 31-07-15; 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.