CAUSE TITLE POCSO Case No. 64/16

Informant: 'Y'.

Accused: Sri Sanu Gogoi,

S/o- Sri Kuladhar Gogoi,

R/o- Hatiali Gaon, PS- Tengakhat, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Sri S. Todi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 64/16 G.R. Case No. 2323/16

> > State of Assam

-Vs-

Sri Sanu Gogoi

Charges: Under Section 4 POCSO Act.

Date of evidence on : 19-12-17, 06-02-18, 15-03-18, 27-04-18 and 29-05-18.

Date of argument : 24-05-19. Date of Judgment : 29-06-19.

JUDGMENT

1) The prosecution case in a nutshell is that on 20-04-16, at about 4:15 am, the victim 'X' went out for her morning exercise and jogging. At that time, Sri Sanu Gogoi (hereinafter the accused person) committed rape on the victim 'X'. An ejahar regarding this incident was lodged by the victim's father 'Y' which was registered as Tengakhat PS Case No. 72/16 under Section 376 of the Indian Penal Code (IPC for short) and SI Prasanna Kumar Sonowal was endorsed with the investigation.

2) The investigating officer (IO in short) embarked upon the investigation. He went to the place of occurrence, prepared the Sketch-Map and recorded the statements of the witnesses. He also recorded the statement of the victim and forwarded her to the Magistrate who recorded her statement under Section 164 of the Code of Criminal Procedure (CrPC for short). The victim was also forwarded to the medical officer (MO in short) who examined her. On finding prima facie materials, the IO submitted Charge-Sheet against the

- accused under Section 376 IPC, read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 4 POCSO Act was framed, 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 seven witnesses including the MO and the IO and exhibited several documents, while the defence cross-examined the witnesses in extenso.
- 5) I have heard the arguments submitted by the learned counsel for both the parties.

Point for determination:

- 6) On the backdrop of the rival contentions, proponed at the bar, the following points are apposite for proper adjudication of this case:
 - i. Whether on 20-08-16, the accused committed penetrative sexual assault on the victim 'X'?

Decision thereon and the reasons for the decision:

- 7) To decide this case in its proper perspective, it is necessary to delve into the evidence.
- 8) The victim 'X' testified as PW-1 that the accused person is known to her. On 20-09-16, in the wee hours of morning, she went out of the house for a stroll. As she was engrossed with her mobile while walking towards the road, the accused suddenly appeared from backside and lifted her and crossed the low fence of about 1 foot height and took her to a weighing house (pat ghar) in the garden and attempted to commit rape on her. The accused was inebriated and she was almost suffocated by the foul smell emanating from

the accused person. The accused pulled her garment and scratched her hands and body in his attempt to commit rape. Suddenly, the accused released her and she went home. As she was terrified, she was reluctant to inform her parents. Then she informed her mama (uncle) and mami (aunt) about the incident. At night, they visited them and they informed her father who lodged this case. The police recorded her statement and forwarded her to the doctor for medical examination and also to the Magistrate for recording her statement. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(5) are her signatures. The police also took one certificate regarding her age. Ext. 3 is the Seizure-List and Ext. 3(2) is her signature, which she affixed when the police seized the original High School Pass Certificate of Sasagji High School.

9) In her cross-examination, PW-1 has admitted that it is a fact that she invited the accused, as he proposed to marry her and she also asked the accused to take her parent's permission. PW-1 was also confronted by the learned defence counsel regarding her statement under Section 161 CrPC. the IO Prasanna Kumar Sonowal testified in his cross-examination as PW-7 that the victim stated before him that the accused called her over phone and sent SMS to her and she knew the accused very well. She also stated before him under Section 161 CrPC that she received a missed call from the number 8752019153 and thereafter, she called back and started chatting with the accused. She also stated under Section 161 CrPC that she chatted with the accused throughout the night till the morning over phone and through SMS and she also provided him with her address and invited him to her house with the misunderstanding that the accused was Rajib Gohain. The victim also stated under Section 161 CrPC that on 20-08-16, at about 3:30 am, she came out of the house and called Rajib Gohain and called him to the village road

and accordingly, she went to the village road and met Rajib Gohain on the village road. The IO has testified in his cross-examination that PW-1 did not state before him that on 20-09-16, while she was walking on the road in the wee hours of the morning, the accused suddenly appeared from the backside and lifted her crossing the low fence which was about 1 feet height.

- 10) It is pertinent to mention at this juncture that the victim's entire evidence has been contradicted through her cross-examination and through the cross-examination of the IO. There may be a misunderstanding. It may be true that the victim went to meet another person named Rajib Gohain, but the accused who posed himself as Rajib Gohain took the advantage of the situation. However, it has not been proved through the evidence of PW-1 that she mistook the accused to be Rajib Gohain.
- 11) There is a difference regarding the date of the incident. The victim gave a wrong date. The alleged incident occurred on 20-08-16, whereas the victim testified that the incident occurred on 20-09-16.
- 12) The victim testified in her cross-examination that the accused is also known as Rajib Gohain. Due to the major contradictions regarding the omission of the victim to state under Section 161 CrPC that the accused carried her across the fence and attempted to commit rape, the accused gets the benefit of doubt. In her statement under Section 164 CrPC, the victim stated that while she was walking, one boy with his face covered with black cloth, attired in half pant and ganjee, dragged her towards the road and made her cross the fence and took her towards the 'patghar' and locked the door from inside and forced her to the floor and removed her underwear upto her knee and committed penetrative sexual assault upon her. He attempted to commit rape on her thrice and was successful on the third time to commit sexual

intercourse with her. During her struggle to resist sexual assault, she could remove the cloth from the boy's face and then she could identify that the boy was the accused and he was inebriated. He also groped her entire body and she experienced pain in her private part. Ext. 1 is her statement in five pages. The statement of the victim under Section 164 CrPC is not similar to her testimony in the Court. There may be a mistake regarding the date. This error can be overlooked, but due to the major contradictions, the accused gets the benefit of doubt. In her testimony, she stated that the accused attempted to commit rape. She omitted to testify that the accused person's face was covered with a piece of black cloth and during her struggle, the black cloth got untied and she noticed that the accused was the miscreant. She did not describe in detail while she testified in the Court how the accused attempted to commit rape on her and was successful in his third attempt to commit penetrative sexual assault on her. The contradictions are too many and discredit the testimony of the witness. The evidence of PW-1 does not inspire confidence. Her evidence is not found to be credible.

13) Her father 'Y' testified as PW-2 that the alleged incident occurred on 20-09-16. On that day, at about 7:00 pm, he heard about the incident. His daughter 'X' informed her uncle and aunt that the accused committed rape on her in the 'patghar' when she went out to play in the morning. Then he asked his daughter and she informed him about the incident. Then he lodged an ejahar with the police. The ejahar was written by the Gaonburah according to his information. Ext. 2 is the ejahar and Ext. 2(1) is his signature. The police took one certificate regarding his daughter's age. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature. The police recorded his daughter's statement and forwarded her for medical examination. She was

- also forwarded to the Magistrate for recording her statement.
- 14) The evidence of this witness clearly depicts that the victim's uncle and aunt informed him that the accused committed rape on his daughter, whereas, on the contrary, his daughter testified in the Court that the accused attempted to commit rape on her. This witness has given evidence according to the information received by the mama and mami from his daughter. When the victim herself failed to implicate that the accused committed rape on her, the accused cannot be held to be guilty of offence of penetrative sexual assault. Moreover, it has already been held in my foregoing discussions that the evidence of the victim does not inspire confidence.
- 15) In his cross-examination, he testified that he knew the accused since he was a kid.
- 16) Thus, it is clear that the accused was acquainted wit the victim and her family members. Even if the accused had his face covered with black cloth, the victim could have easily identified him from such close range, that too in the morning. Moreover, her statement under Section 164 CrPC is not similar to her testimony in the Court. It is also held that her statement under Section 161 CrPC is also contradictory to her testimony in the Court. There are too many contradictions in the victim's evidence.
- 17) The other contradiction was elicited through the evidence of Smt. Jina Gogoi who testified as PW-3 that the victim is known to her, but the accused is not known to her. The alleged incident occurred about two months back. On the evening of the incident, at about 4:30 pm, 'X' came to her house and informed her that one boy groped her when she went out for her morning walk. She did not give the boy's name. She informed her parents about the incident.

- 18) Thus, the entire prosecution case falls through. PW-3 is the mami who informed the victim's parents about the incident. She refrained from naming the boy. This casts a shadow of doubt over the veracity of the evidence of PW-1. The accused ought to get the benefit of doubt, as the first person to whom the victim informed about the incident, failed to identify the accused person.
- 19) The victim's mama Sri Bhuban Gogoi testified as PW-5 that the accused person is not known to him. The victim is his niece. He did not know about the incident.
- 20) This witness was declared as hostile on the prayer by the prosecution and the prosecution was allowed to cross-examine this witness. The statement under Section 161 CrPC of this witness is affirmed by the IO. The IO has affirmed as PW-7 that Sri Bhuban Gogoi (PW-5) stated before him that:- "Yesterday, at about 7:30 pm, Sikhamoni Gogoi came to our house and had a talk with my wife. Then she told my wife that on 21-08-16, at about 4:00 am in the morning, she went for morning walk and then a person committed rape on her and as she was hesitate to inform her family members, she informed my wife about the incident. Thereafter, my wife informed me and then I went to the victim's house and informed the family members of the victim about the incident and when she was asked who was the boy, she divulged that Kuladhar Gogoi's son Sanu Gogoi was the miscreant. Later on, the victim's father lodged an ejahar with the police." Ext. 7 is the statement of Sri Bhuban Gogoi and Ext. 7(1) is the signature of the IO.
- 21) This statement under Section 161 CrPC cannot be considered as evidence. It is thereby held that the evidence of PW-5 does not implicate that the accused is complicit.

- 22) Sri Deba Gogoi testified as PW-6 that both the parties are from his village. He heard from the villagers that the accused indulged in eve teasing with the victim.
- 23) The IO SI Prasanna Kumar Sonowal testified as PW-7 that on 20-08-16, he was posted at Tengakhat Police Station as Officer-in-charge. On that day, he received an FIR from the informant and registered Tengakhat PS Case No. 376 IPC and commenced investigation. Ext. 2 is the FIR and Ext. 2(2) is his signature. He recorded the statement of the informant in the police station and went in search of the accused, but did not find him. On the next day, he went to the place of occurrence and found the victim and recorded her statement. The victim showed him the place of occurrence and he prepared the Sketch-Map Ext. 5 wherein Ext. 5(1) is his signature. He forwarded the victim to the doctor for medical examination and also to the Magistrate who recorded her statement under Section 164 CrPC. He seized one school certificate through Ext. 3 wherein Ext. 3(3) is his signature. On finding sufficient materials, he filed Charge-Sheet against the accused. He arrested the accused and forwarded him to the Court. Ext. 6 is the Charge-Sheet and Ext. 6(1) is his signature.
- 24) It has already been held in my foregoing discussions that the victim's evidence does not inspire confidence. There are too many contradictions which I have discussed in detail. Due to the contradictions in the evidence, elicited through the cross-examination of the witnesses and also through the cross-examination of the IO, it is thereby held that the accused gets the benefit of doubt. The cross-examination of the IO has already been discussed in my foregoing discussions.
- 25) In view of my foregoing discussions, it is thereby held that the prosecution

failed to prove beyond reasonable doubt that the accused committed

penetrative sexual assault on the victim 'X'. Thereby, the accused Sri Sanu

Gogoi is acquitted from the charges under Section 4 POCSO Act on benefit of

doubt and is set at liberty forthwith.

26) The victim does not deserve compensation and so this case is not

recommended for compensation to the victim.

Judgment is signed, sealed and delivered in the open Court on the 29th day of

June, 2019.

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 POCSO Case No. 64/16

List of witnesses for prosecution:

- 1. PW-1 The victim 'X';
- 2. PW-2 The informant 'Y';
- 3. PW-3 Smt. Jina Gogoi;
- 4. PW-5 Sri Bhuban Gogoi;
- 5. PW-4 Dr. Nibedita Shyam;
- 6. PW-5 Sri Biju Gogoi;
- 7. PW-6 Sri Deba Gogoi;
- 8. PW-7 SI Prasanna Kumar Sonowal.

List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim 'X' recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 4 Medico-legal Report;
- 5. Ext. 5 Sketch-Map;
- 6. Ext. 6 Charge-Sheet;
- 7. Ext. 7 Statement of PW-5 Sri Bhuban Gogoi under Section 164 CrPC which was declared hostile on the prayer by the prosecution.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil. List of exhibits for defence: Nil.

> Sessions Judge, Dibrugarh

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