

IN THE COURT OF SPECIAL JUDGE ::::::::::::::: BAKSA, MUSHALPUR

Present : Shri C. Das, AJS.

Judge, Special Court,
Baksa, Moshalpur

JUDGMENT IN SPECIAL POCSO CASE NO.48/2018

u/s 8 of POCSO Act

State

-versus-

Md. Safiur Ali

.....Accused

Appearance :

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. M. Mazumdar, Advocate

Date of evidence : 9/9/15, 22/9/15, 29/7/16, 29/6/17

Date of argument : 29/10/18

Date of judgment : 12/11/18

JUDGMENT

1. The case of the prosecution briefly, is that on 19/6/15, the complainant Smti. Gita Kalita lodged a FIR before the Officer-in-charge of Tamulpur police station, alleging inter-alia that on the same day, at about 10 am., while her 14 years daughter was alone in her home, the accused came to her home under pretext to have a glass of water. The accused thereafter, pulled her daughter inside the house and forced her to lay down on the bed with an attempt to commit sexual assault upon her said daughter. Due to alarm of her daughter, the accused tried to flee away. But local people could able to apprehend the accused and handed him over to the police.

2. Accordingly, the police registered the Tamulpur PS. Case No.111/15 and started the process of investigation. During the investigation, the police visited the place of occurrence, examined the witnesses. At the end, the police having

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found a prima-facie case well established, submitted the charge-sheet against the accused to face trial in the court.

3. When the accused was produced before the court, he was immediately, furnished with the relevant copy of the case. After hearing the both sides and on perusal of the material on record, the charge u/s 8 of POCSO Act framed against the accused. The charge was then, read over and explained to the accused who pleaded not guilty and claimed to be tried.

4. In the trial, the prosecution examined as many as, nine (9) witnesses including the I/O to support its case. The accused in his statement recorded u/s 313 CrPC., took the plea of total denial of all the incriminating circumstances appeared against him. However, the accused declined to adduce any evidence in his defence. Thereafter, the argument of both sides was heard at length.

POINT FOR DETERMINATION :

5. Whether on 19/6/15, at around 10 am., the accused committed sexual assault upon the victim girl ;

DECISION AND REASON THEREAFORE :

6. At the outset of argument, learned Public Prosecutor, Baksa, submitted that the evidence on record to prove the guilt of the accused. He submitted that if the evidence of the victim is carefully perused, it would appear that it was the accused who by entering into the house of the victim, tried to commit sexual assault upon her but due to her timely alarm, local people caught him while tried to flee away from the crime scene. Hence the conduct of the victim causing due alarm on right time, is sufficient enough and relevant to point the guilt towards the accused and as such, the accused is liable to be punished under the relevant provisions of law, he submitted. Learned Public Prosecutor placed the decision of Hon'ble Delhi High Court, reported in **CRL. A. 751/2014 Chander Singh vs. State, decided on 3/6/16** wherein, it was observed as that it would be now apposite to note the testimony of PW-4 the mother of the prosecutrix who deposed that on February 09.2013 at about 7.00 PM her daughter had gone to throw the garbage in the public dustbin near her house. When her daughter came back from the public dustbin she was very nervous and perplexed. When she asked from her by making gestures the prosecutrix told her by gestures that one person misbehaved with her by pressing her mouth and breast and putting his hand on her lower back side.

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On hearing this she along with her husband and the prosecutrix went to the said place i.e. public dustbin at K block where the appellant was present and her daughter pointed towards the appellant as the person who had misbehaved with her. On seeing them, appellant tried to run away from there but in the meanwhile her brother also came there and apprehended the appellant. The conduct of prosecutrix pointing towards appellant as the person soon after the incident when she was in a perplexed and nervous condition forms part of the transaction of the incident itself and is thus admissible under section 6 and 8 of the Evidence Act. On being pointed out, the conduct of the appellant trying to run away from the spot is also relevant and admissible under section 8 of the Evidence Act. The evidence on record as discussed aforesaid proves beyond reasonable doubt the offence committed by Chander Singh.

7. Learned Public Prosecutor, Baksa further submitted that there is no dispute that the victim girl is a minor and as such, their evidence is to be visualised from realistic view so as to appreciate the matter in true prospective and held in **Criminal Appeal No.238/16 by Hon'ble Gauhati High Court**. He submitted that the sole evidence of the victim is itself is reliable to bring home the charge against the accused and he relied the view given in **State of Himachal Pradesh vs. Sanjay Kumar @ Sunny 2016 0 SC 992**, that (B) Indian Penal Code, 1860 376-rape-Testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitated looking for corroboration of a statement, court should find no difficulty to act on testimony of victim of a sexual assault alone to convict accused accused-seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury-Deposition of prosecutrix has to be taken as a whole- Victim of rape is not an accomplice and her evidence can be acted upon without corroboration-She stands at a higher pedestal than an injured witness does- If court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version- To insist on corroboration, except in rarest of rare cases, is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood- It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in case of an accomplice to a crime.

8. In the case of child rape, the Hon'ble Supreme Court in **State of Rajasthan vs. Om Prakash reported in (2002) 5 SCC 745** held that Child rape cases are cases of perverse lust for sex where even innocent children are not

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Baksa*

spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resources of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well considered and well analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two under wears wholly insignificant.

9. Countering the above submissions, learned counsel for the accused raised and pointed out series of contradictions in the evidence of the prosecution witnesses. He submitted that the accused is totally innocent person who on his way to home, entered into the house of a villager to recharge his mobile handset and therefrom, the complainant sides caught him without any reason since they could apprehend the real culprit. He submitted that the accused never went inside the house of the complainant let alone attempting to commit sexual offence against the victim girl. Moreover, there is no proof of the fact that it was the accused who entered into house of the complainant since there was no identification of the accused who was apprehended on road as well as, the accused is implicated in to the false case politically by some local groups. Therefore, the evidence of the prosecution is sufficient to convict the accused, he maintained.

10. After hearing the above submissions from both sides, it is pertinent to go through the evidence on record. It is important to note here in the light of above law that in cases of sexual offences, main thrust has to be given on the victim person without seeking corroboration from other witnesses, if her evidence is found wholly reliable. The prosecution examined the complainant Smri. Gita Kalita as PW5. She deposed inter-alias in the court that she is the mother of the victim girl. Further she stated that on the fateful day, she went out for planting seed. Her younger daughter aged about 7 years went to the school and the victim was alone

in the house. Her brother Dhanjit Konwar (PW4) resides in front of her house. On the day of occurrence, PW4 went to the place where she was planting paddy sapling in the field. Her parental aunt, the mother of PW4, reported her that one 'Mia' boy entered into her house and committed some bad thing upon her daughter/ victim and immediately, she came to her house. She entered into her house and asked the victim as to what happened. The victim told her that while she was taking rest on bed, the accused entered into the room and asked for a glass of water. The victim then warned the accused as to why he entered into the room. The accused then, closed the door from inside. The accused told the victim that he loved the victim and proposed to marry her. The victim then got frightened and told the accused that she would report the matter to her mother and grandmother. The accused then, threatened the victim that if she disclosed the matter he would kill the victim. The accused then, gagged the mouth of the victim and pushed her into the bed and pressed her breast. The victim could somehow managed to turn herself and raised shouting calling her uncle, PW4. Hearing the cry of the victim, PW4 rushed to her house and at that time, the accused taking his snadal, on his hand, ran away towards the house of Sarala Deka(PW2) and PW4 followed the accused and apprehended him in the house premises of PW2. The house of PW2 is situated in front of the Shiv temple of her house. With the help of some people and Bajrang party, the matter was informed to the police. Hence the police came to her village and took away the accused to the police station. She went to the police station with PW4, Leela Deka and Utpal Das and lodged the FIR vide Ext.1 with her signature. At the time of occurrence, her husband was not present since he was in Guwahati. The scribe read over the contents of Ext.1 to her and she put her signature thereon being found correct.

11. In the cross-examination, PW5 stated that she did not see the occurrence. She got her FIR written by a person of a chamber of an Advocate. At the time writing of FIR, Kamal Kalita, Utpal Das, Nomal Kalita of student organisation and others from Bajrang Dal were present. The FIR was lodged at the instigation of members of student organisation and Bajrang Dal. If shout is raised in her house, it can be heard by the neighbours. Thus, it appears that PW5 was reported witness of the occurrence by the victim girl but she proved the FIR so lodged by her.

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Baksa*

12. It appears that the prosecution examined the victim girl as PW6 in the case. She is main witness of the prosecution case and the sole victim of the alleged occurrence. (The name of the victim is withheld) There is no dispute that PW5 is the mother of the victim. The victim stated that on the fateful day at about

10 am., she was alone in the house since PW5 went to paddy field while her father went to Guwahati and her younger sister went to school. She did not attend her school on that day. While she was working in her room, the door of the house remained opened. The accused came and closed the door. The accused asked her for a glass of water. The accused told her that he will marry her and asked her not to raise any noise. Hence, she told the accused that she will report it to her mother. Thereafter, the accused came forward towards her and told to marry. Then she told the accused that she will report it to her grand-mother. Then the accused threatened her if she disclosed it to others. After hearing words of the accused, she shouted to call her grand-mother but due noise coming from a saw-mill, running nearby to house, her grand-mother did not hear her shouting. Then the accused caught her breast by his one hand and gagged her mouth by his other hand and pulled her down on the bed. But she somehow managed to escape from the hands of the accused. She immediately went to the house of her uncle, situated behind her house and raised alarm to her grand-mother. At that time, her uncle(PW4) came to his home to have water. PW4 was under impression of something was happened after having seen her crying and saw the accused running away, followed the accused to the house of one Rabin Deka and apprehended the accused from the house of Rabin Deka who is her teacher. PW4 produced the accused before the local public and inquired him about the incident. PW4 brought her before the accused and she identified the accused. PW4 reported the incident to other at the Shiv temple where the accused was held up nearby. When PW5 came from paddy field, she reported the incident. After informing the incident by PW5, the police came and took her to record her statement vide Ext.2 with her signatures.

13. Thus, PW6 narrated the story of occurrence which corroborates to the version of PW5. In the cross-examination, PW6 stated that due to running of a saw-mill in front of her house, shouting from her house can not be heard by others immediately. Often people from the mill comes to her house to collect dao. The accused entered into her house without calling her from outside. Due to her alarm, her grand-mother Dipti Konwar came to her house. She reported the incident to her grand-mother. She could not remember if the accused was a cripple person. She saw the accused running away. She did not know that the accused was a cripple. She did not fail in any examination. Thus the evidence of PW6 corroborates the claim of PW5. It appears from the evidence of PW6 that her uncle being PW4 came into crime scene immediately after departure of the accused from the house of the victim.

14. PW4 Sri Dhanjit Konwar is the uncle of PW6. He resided in a house


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behind the house of PW6. He stated that on the fateful day, at about 11 am., while he returned to home from market and had water, he heard hullah raised by PW6 he then rushed to the house of PW5. At that time, he saw the accused just coming out of the house of PW5 with sandal on his hand and tried to flee away. He could not apprehend the accused immediately and he followed the accused. He could apprehend the accused in the house premise of Sarala Deka(PW2), wife of Rabin Deka while the accused requesting PW2 to allow him to recharge his mobile. Then he took the accused to the Shiv mandir of his village. At that time, some people gathered there. PW6 told him that in the pretext of drinking water, the accused came inside the room and pulled her down on the bed and embraced her. His sister lodged the FIR. Some students informed the police who came to the place of occurrence and took the accused to the police station.

15. In the cross-examination, PW4 stated that his house and the house of Sushil Deka are situated near the house of the informant. A saw mill is situated in front of the house of the informant. At the time of the occurrence, the mill was running and there was some persons in the mill. While he was following the accused, his mother and Raju Das were with him. From PW2 he came to know that the accused asked her to allow recharge of mobile. When he chased the accused, PW6 was at her house. After 10/15 minutes of the occurrence, he could able to apprehend the accused. About 100 people gathered at the Shiv temple at the material time. He stated that he did not assault the accused but a person whom the accused called as 'mama' assaulted the accused. Apparently, the evidence of PW6 is corroborated by the version of PW4.

16. Further, the evidence of PW1 Sri Jitu Das is that on the fateful day, at noon, on hearing hullah, he came to the road and saw the accused nearby the Shiv temple with gathering of public who assaulted the accused physically. He came to know that the accused was assaulted because he entered into the house of the informant. Thus, the evidence of PW1 corroborates the fact that the accused was brought near to the village temple. He also, discloses a new fact that the accused was physically assaulted by the public which does not support the claim of PW4.

17. PW2 Smti. Sarala Deka is the neighbour of PW5 and the accused was caught by PW4 at her house. She is the wife of Rabin Deka as disclosed by PW5. The evidence of PW2 is therefore, important for the prosecution case. PW2 stated that she saw the accused only on the fateful day. At the time of occurrence, at about 10 am., while she was in her home, all of a sudden, the accused came running to her home and called her to allow recharging his mobile set. Since she did not know the accused, she immediately refused allow recharging of mobile of the accused. At

that time, PW4 came running to her home and caught the accused. On her inquiry, PW4 disclosed that the accused entered into the house of PW6.

18. In her cross-examination, PW2 stated that she was alone in her home at the relevant time. She did not hear any shouting from the house of PW6 since she was inside her home. She saw PW4 apprehended the accused single handedly. PW4 did not raise any alarm. She did not know from which place, the accused belongs to. After going through the evidence of PW2, it appears that her version corroborates the evidence of PW4, 5 and 6 without any elements of lapse of sequence of event.

19. PW3 Smti. Leela Das stated that she saw the accused at the police station. At the relevant time, she was busy with cooking at a school. Somebody informed her that a hullah took place at her village. On the day of occurrence, the informant proceeded to her school by village road and she was crying. The informant told her to accompany to the police station and told her that one boy entered into her house and pulled down her daughter into the bed after gagging the mouth. Some students also, asked her to accompany the informant to the police station. Apparently, PW3 went to police station with PW5 and she was a reported witness of occurrence. Her evidence supported the claim of PW5.

20. The evidence of PW7 Sri Atul Konwar is that he came to know from PW5 and his wife Dipti at about 3 pm., on the fateful day that the accused at about 11-30 am., by entering into the house of PW5, tried to rape the victim girl(PW6). Thus, the evidence of PW7 is hearsay in nature but supported the claim of PW5.

21. On perusal of the evidence of PW8 Nandeswar Kalita, it appears that he is the father of PW6. He stated that he came to know about the accused from the day of occurrence. At the time of occurrence, PW6 was 13 years old. He was in Guwahati at the time of occurrence. On the fateful day, member of local student union informed him over phone that one boy under pretext of drinking water, entered into his house and attempted to rape his daughter and called him to come to the police station. Accordingly, he came to the police station and saw the accused. Other villagers were also present there. He was informed that the accused was involved in the occurrence. PW5 reported him about the occurrence.

22. From the cross-examination, it appears that PW8 disclosed that he saw the members of local student union. Thus, the evidence of PW8 supports the case of prosecution although he was a reported witness of the occurrence.

23. The evidence of PW9 Dhrubajyoti Nath, the I/O of the case is that on 19/6/15, while he was working in Baksa district as probationer, on that day, one FIR was lodged by PW5 and the O/C of Tamulpur police station, registered the case no.111/15 vide Ext.1 and he was endorsed to investigate the case. Accordingly, he visited the place of occurrence which was the house of the victim girl. He drew a sketch map of place of occurrence vide Ext.3 with his signature. He recorded the statement of the witnesses including the victim. He sent the victim for medical examination and recording her statement u/s 164 CrPC, he collected the copy of birth certificate of the victim. He arrested the accused. On completion of the investigation, getting material against the accused u/s 448 IPC u/s 10 of POCSO Act, filed the charge-sheet against the accused vide Ext.4 with his signature.

24. In the cross-examination, the I/O stated that he arrested the accused from the place of occurrence where the accused was confined. There was a saw mill near the place of occurrence but it was not running at the relevant time. In the light of question of the defence, the I/O controverted that PW4 did not state to him earlier that the accused asked Sarala Deka to recharge his mobile set. But such omission is not significant as far as the case of the prosecution is concerned since PW2(Sarala Deka) disclosed the said fact clearly in her evidence. Further the I/O controverted that PW5 did not disclose to him earlier that the victim told her that the accused told her that he loved her and gave proposal of marriage and being angry, the victim told the accused that she will report it to her mother and grandmother and the accused gagged her mouth and pulled down into the bed and pressed her breast and she raised shouting calling her uncle for help. After perusing the evidence on material points, it is found that PW5 was not an eye-witness of the occurrence and neither the prosecution attempted to prove what was reported by PW6 to PW5, was true and as such, such omission does not erode the credibility of the prosecution case. Apart from above, the I/O controverted that the victim girl did not disclose earlier to him that the accused threatened her to kill and that the accused gagged her mouth and touched her breast and that she was taken to Shiv mandir in presence of huge gathering and the villagers inquired her about bring the accused to Shiv mandir. Such omission of the victim will be considered during the appreciation of evidence as a whole.

25. From the above discussion of the evidence of the prosecution witnesses, it appears that the case of the prosecution rests on the evidence of PW2, 4, 5 and 6. Other witnesses are hearsay type in nature though they support the prosecution case on material points. As far as age of the victim(PW6) is concerned, it appears from the evidence of PW8 that the victim was 13 years old at the time of occurrence. There is no dispute that the victim was below 18 years of

age at the time of occurrence. Thus, it can safely be held that the victim was a minor at the relevant time within the meaning of POCSO Act.

26. On careful examination of the evidence of the victim(PW6), it appears that the occurrence took place during broad day light. Hence, the question of poor visibility of a person does not arise. It is not disputed that PW6 the victim was alone in her house at the relevant time. It is also, not dispute between the sides that members of local student union and one Bajrang party present and took initiative to file the case against the accused. But that does not show any partial role played by them in filing the FIR against the accused. It appears that since the informant and her husband did not have the clue for future course of action against the accused after the occurrence, the members of those parties helped to file the FIR in proper manner to set the law in motion.

27. From the evidence of the victim(PW6), it shows that the accused entered into her house through a opened door. Perhaps, the accused knew that PW6 was alone in her house. Apparently, the evidence on record does not disclose that PW6 knew the accused prior to the occurrence or had any terms with each other. Thus, the conduct of the accused to close the door of the room of PW6 immediately after he entered into her home is relevant u/s 8 of Evidence Act. So it infers that the accused entered into the house of PW6 who is not known either to each other. If the accused entered into the house of PW6 and closed the door, what he did thereafter, is required to assess from the evidence of PW6 since was only eye-witness and the victim of the occurrence. It appears from the evidence of PW6, the accused asked her for a glass of water and then, the accused had conversation with PW6 by proposing her to marry and not to make any noise. It was objected by PW6 by reporting to her guardians and in the meantime, the accused came near to her. Then the accused threatened her if she disclosed it to anybody. At this stage, attention should be drawn to the omission of PW6 in her statement u/s 161 CrPC., as disclosed by the I/O. Apparently, PW6 omitted the vital part of sequence of the occurrence regarding threatening by the accused to her which significantly takes away her credibility. Thus, such omission contradicts the version of PW6 and creates doubt on the fact of if the accused caused any threatening to her. Further, PW6 stated that her mouth was gagged by the accused before pushing into the bed and he touched her breast. But as per evidence of the I/O, PW6 omitted such vital part of evidence in her statement recorded u/s 161 CrPC. Apparently, this part of omission of PW6 also, rodes her reliability as because it is most significant part of the occurrence as far as the offence for which the accused is charged with, is concerned. However, omission of PW6 as regards to taking to the Shiv mandir is not important for discredit her reliability. But at the same time, above omission is truly

erodes the reliability of PW6 on the material point of the occurrence.

28. Apart from above, the evidence of PW6 shows that she somehow managed to escape from the hands of the accused and raised alarm near the house of PW4. On this point, PW4 corroborates the claim of PW6 as he found PW6 was seen crying. The fact that the accused was running away from the house of PW6 with sandal on his hand, is also, supported by PW4. Further the evidence of PW4 that he caught the accused at the house of PW2 while the accused entered into the house of PW2 under pretext of recharging his mobile hand set. Such act of the accused is definitely, very suspicious since PW2 did not know the accused at that time. There is consistency between the evidence of PW6 with the version of PW2 and 4. The defence could not elicit any doubtful elements on their evidence regarding apprehension of the accused by PW4 at the house of PW2. Thus, it clearly proved that on the fateful day, at the relevant time, the accused ran away from the house of PW6 to the house of PW2, carrying his sandal on his hand. But that is not sufficient to implicate the accused in the offence of sexual assault to PW6 in her house as she omitted vital aspect of sequences of occurrence which happened in her house at the behest of the accused. The omissions of PW6 in her previous statement as referred above, infers that actually the accused only made proposal of marriage to her by entering into her house without touching her breast, gagging her mouth and threatening to her. Hence the evidence of PW6 with PW4 makes it clear that the accused entered into the house of PW5 when PW6 was alone but did not able touch her body part. What PW6 stated in the court is not reliable to believe since she omitted to disclose it to the I/O earlier. Such omissions create doubt if the accused caused any threatening and committed sexual assault within the provisions u/s 8 of POCSO Act to her. Therefore, it is found that the evidence of PW6 is not wholly reliable to believe since there is doubt over her version. In view of existence of doubt in the evidence of PW6 who is the main victim of the occurrence, the accused is entitled to get the benefit of such doubt on the basis of evidence of the victim girl. Accordingly, the accused is given the benefit of such doubt.

29. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Hence the accused can not be held guilty u/s 8 of POCSO Act. The accused is therefore, acquitted and set at liberty. The bail bond of the accused shall remain in force u/s 437-A CrPC for another 6 months. This court recommends for payment of compensation to the victim girl by the DLSA as per relevant rules. Forward a copy of judgment to the District Magistrate, Baksa, Muzalpur immediately.

*Sessions Judge
Baksa*

30. Given under the hand and seal of this court on this 12th day of November 2018.

Dictated and corrected by :


C. Das,
Sessions Judge
Judge, Special Court,
Baksa,
Baksa, Moshalpur


Sessions Judge
Judge, Special Court,
Baksa,
Baksa, Moshalpur

Typed by :

P. Deka, Com. Typist

APPENDIX:**List of prosecution witness :**

PW1 ... Sri Jitu Das,
PW2 ... Smti. Sarala Deka
PW3 ... Smti. Leela Das
PW4 ... Sri Dhanjit Konwar
PW5 ... Smti. Gita Kalita ... informant
PW6 ... the victim girl
PW7 ... Sri Atul Konwar
PW8 ... Sri Nandesawr Kalita
PW9 ... Sri Dhrubajyoti Nath ... I/o

List of defence witness :

Nil

List of documents exhibited :

Ext.1 ... FIR
Ext.2 ... statement of victim
Ext.3 ... sketch map
Ext.4 ... charge-sheet

Sessions Judge, 12/11/18
Judge, Special Court,
Baksa, Muzalpur