### **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.32/2017

U/S- 18 of the POCSO Act, 2012.

State of Assam

-Versus-

Jaydev Barman @ Hapa

s/o-Late Naren Barman

Resident of vill –Amingaon Post Office Colony

P.S.-North Guwahati

Dist- Kamrup (R)

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

Mr. Abdur Rahim, Ld. Advocate ------for the accused

Date of evidence:04.12.2018, 07.12.2018, 27.03.2019 and 29.05.2019.

Date of Argument: 16.07.2019 and 30.07.2019

Date of Judgment: 08.08.2019

### JUDGMENT

- 1. The Prosecution case in brief is that—on 29.07.2017, the complainant Maijan Begum lodged an ejahar alleging that on that day at about 7.00 p.m, the accused— Jaydev Barman @ Hapa tried to commit rape upon her minor daughter, taking her with him in his scooty to Madhyum Basti (Amingaon) in a building, where he pressed her mouth and tried to commit bad act with her but somehow she managed to escape from the hands of the accused. Hence, this case.
- 2. On the basis of the said ejahar, North Guwahati P.S Case No. 67/2017 U/S-366 (A) of IPC R/W Section 18 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 18 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court, after hearing both the parties, framed charges U/S- 18 of the POCSO Act, 2012, against accused person— Jaydev Barman @ Hapa. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 6 (six) witnesses including the informant and the victim girl.

#### **5.** POINT FOR DETERMINATION:-

(I) Whether the accused person on 29.07.2017 at about 7 p.m at village Amingaon under North Guwahati P.S attempted to commit rape upon the prosecutrix below the age of 16 years and thereby committed an offence punishable under section 18 of the POCSO Act, 2012?

### DISCUSSION, DECISION AND REASONS THEREOF

6. In this instant case, accused is charged u/s 18 of POCSO Act, 2012.

Now , section 18 of POCSO Act, 2012 provides "Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both."

- 7. To decide the above sections of law, let us go through the evidences of the witnesses alongwith the relevant documents.
- 8. P.W.1, Musstt. Maijan Begum is the informant of this case. She knows the accused person—Jaydev Barman @ Hapa, who is her neighbour. Prosecutrix is her daughter. She was about 13/14 years old at the time of occurrence. She deposed that the incident took place about 1 ½ year ago at about 7.00 p.m. At the relevant time, prosecutrix went to ICD chowk bazaar for marketing. While she was returning home by walking, then the accused came on the bike and he asked her to get up in the bike so as to drop her in the house. But the accused did not take her to her house. Instead he took her to some other side and rode the bike in high speed. The accused took her to Agiathuri. Then, he took the prosecutrix to an under construction building and he pushed and pulled her and attempted to do some bad act with her. The accused asked her not to tell the incident to any one and offered her money in return. But, the prosecutrix gave a blow to the accused and ran away from the spot. Thereby, she saved herself from his hands and came home. She told P.W.1 about the incident. Then, P.W.1 went to the house of the accused person and met his mother and told her about the incident. The accused fled away from the village after the incident. Then, P.W.1 informed the incident to the village Mahila Samittee and lodged the ejahar. Police sent the prosecutrix for her medical examination to TRB, Kmrup Civil Hospital, Amingaon and brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. Police recorded her statement.

In her cross-examination, P.W.1 has stated that she did not know the exact date of occurrence. The ejahar was written by one of her co-village people whose name she forgot. The ejahar was written as per her instruction. P.W.1 disclosed that she came to know about the incident after one hour of the occurrence. Then, she told the incident to Manjula Devi and Munia. She does not know the name of the President and Secretary of Mahila Samittee. P.W.1 stated that she did not see the incident as she was at home at the time of occurrence.

9. P.W.2, prosecutrix deposed in her evidence that informant of this case is her mother. She stated that the incident took place about 1 ½ year ago at about 8.00 p.m. She was about 14 years old at the time of occurrence. P.W.2 disclosed that at the relevant time, she went to ICD chowk bazaar for marketing and while she was returning home by walking, then the accused was coming on his scooty. He stopped the scooty and enquired from her as to where she was going. Then, P.W.2 told that she was going home. He asked her to get up in the scooty so as to drop her in the house. At first, prosecutrix refused but the accused insisted her to get up in his scooty and finally he forced her to get up in his scooty and she got up. But the accused did not take her to her house. Instead he took her to some other road. When she enquired as to where he was taking her, then he told her that he was taking her to home. But the accused rode the scooty in high speed, so out of fear she cried out as it was dark. P.W.2 stated that nobody were present on the road. The accused filled fuel in his Scooty and took her to an under construction building near road side. He asked her to wait near the Scooty while he went to keep something inside the building. Then, he came out and caught hold of her hand and took her inside the building. He pushed her on the floor and got on the top of her. He gagged her mouth with a cloth. And he tried to commit some bad acts with her. But she gave a blow on his face and fled away. While P.W.2 was running away, the accused asked her not to tell the incident to any one and offered to give her Rs.5000/- per month. Thereafter, on reaching home, P.W.2 told about the incident to her mother (P.W.1) and her elder sister. Then, P.W.1 informed the incident to the village Mahila Samittee and she lodged the ejahar. Police enquired her about the incident. Police sent her for her medical examination to TRB, Kamrup Civil Hospital, Amingaon and brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. Ext.1 is the statement. Ext. 1 (1 &2) are her signatures.

In her cross-examination P.W.2 deposed that she knew the accused prior to the incident. She went to the market at 7.00 p.m. She disclosed that she had no enmity with the accused person before the occurrence. She addressed him as 'Dada' and he used to visit their house. She stated that the ICD chowk was crowded at the relevant time. She also stated that the incident took place in the month of July. P.W.2 knew the place where the under construction building was located but she do not know the name of the place. She disclosed that there are other houses near that under construction building.

10. P.W.3, Smti. Gita Prasad has stated in her evidence that she knows both parties of the instant case. She also knows the prosecutrix. She stated that the incident took place about 1 ½ year ago at about 7.00 p.m. At the relevant time, she was in the house of ward member—Manjula Devi. Then, the informant (P.W.1) and the prosecutrix (P.W.2) came crying to the house of the said ward member and told them that when the prosecutrix went to ICD chowk bazaar for purchasing meat and was returning home by walking, then the accused was coming on his scooty. He stopped the scooty near her and asked her to get up in the Scooty so as to drop her in the house. Prosecutrix got up in his scooty. But the accused did not take her to her house. Instead he took her to an under construction building near road side and attempted to commit some bad act with her. But she gave a blow on his face and fled away. She came home and told about the incident to her mother. Informant lodged the ejahar. We accompanied the mother (P.W.1) to the Police Station. Police enquired from her about the incident.

In her cross-examination P.W.3 disclosed that the distance between the house of the informant and her house is about 300 mtrs. The house of Manjula Devi is located near her house. Manjula Devi also accompanied her to the police station. P.W.3 stated that they are not the members of the Mahila Samittee. But they are Mahila Ward Members.

11. P.W.4, Smti. Manjula Devi has deposed that she knows the informant of this case. She also know the accused person—Jaydev Barman @ Hapa. Prosecutrix is also known to her. Prosecutrix was aged about 12-14 years ago. P.W.4 stated that the incident took place about 1 ½ year ago at about 7.00/8.00 p.m. At the relevant time, she was in her house. One Gita Prasad (P.W.3) was present in her house. Then, the informant (P.W.1) came alone crying to her house and told them that when her

daughter (prosecutrix) went to ICD chowk bazaar for purchasing meat. While she was returning home by walking, the accused came on his scooty. He stopped the scooty and asked her to get up in the scooty so as to drop her in the house. Prosecutrix got up in his scooty. But the accused did not take her to her house. Instead he took her to an under construction building and attempted to commit some bad act with her. But she gave a blow to him and fled away. She came home and told about the incident to her mother (P.W.1). Then, the mother and the prosecutrix went to the police station and lodged the ejahar. P.W.4 accompanied the mother to the Police Station.

In her cross-examination P.W.4 disclosed that the distance between the house of the informant and her house is less than ½ km. She did not visit the spot of occurrence. She is the member of Mahila Samittee also. P.W.4 stated that the accused hails from Dhubri but his house is located temporally in the village also and at the time of occurrence he was in the village.

- 12. P.W.5, Dr. Kishore Kumar Pathak has deposed in his evidence that on 29.07.2017 at 11.30 p.m he was working as Sr. Medical & Health Officer, TRB Kamrup Civil Hospital, Amingaon, Guwahati-31. On that day, he examined one Smti. Resma Khatun, female, 13 years of age brought in reference North Guwahati P.S case No. 67/17 U/S-366 (A) of IPC R/W Section 18 of the POCSO Act, 2012. Prosecutrix was escorted by HG Makibur Rahman. On examination, he found no external injury on the victim at the time of examination. Ext.2 is the medical report. Ext. 2 (1) is his signature
- 13. P.W.6, S/I Sri Rana Bhuyan has deposed in his evidence that on 29.07.2017, he was working as i/c in Amingaon O.P under North Guwahati P.S. On that day, the informant—Maijan Begum lodged an ejahar at night in Amingaon O.P. P.W.6 made a G.D. Entry being No. 479 dated 30.07.2017 and recorded the statements of the informant and the victim.. Thereafter, he forwarded the ejahar to O/C, North Guwahati P.S. Thereafter, O/C, North Guwahati P.S registered a case bearing North Guwahati P.S Case No.67/2017 U/S-366 A of IPC R/W section 18 of POCSO Act, 2012 and directed him to investigate the case. Accordingly, P.W.6 visited the place of occurrence along with the staffs on that very day. He recorded the statements of the other witnesses, prepared the sketch map. P.W.6 arrested the accused—Jaydev Barman @ Hapa and forwarded him to the Court. He sent the victim for medical examination and brought her before the court for recording her statement U/S-164 Cr.P.C. Thereafter, P.W.6

completed the investigation and on finding sufficient evidence against the accused person, he submitted the charge-sheet against the accused person U/S- 18 of POCSO Act. Ext.3 is the sketch-map and Ext.3 (1) is his signature. Ext.4 is the charge-sheet and Ext.4 (1) is his signature.

In his cross-examination P.W.6 stated that he received a verbal information regarding the incident by the informant in Amingaon O.P at 12.30 a.m, thereafter he made a G .D. Entry, but the same is not mentioned in the case diary. The date mentioned is the ejahar is 29.07.2017 but they received the same on 30.07.2017 at 12.30 a.m. The same is mentioned in the CD. The statement of the prosecutrix was recorded on 30.07.2017. He recorded the statement of the victim and the informant before the case was registered but he mentioned the P.S case number in the case diary. P.W.6 produced the victim before the court for recording her statement on 31.07.2017. P.W.6 recorded the statement of one witness apart from the victim and the informant. P.W. 1 did not state before him that the accused asked the prosecutrix not to disclose the incident to anybody and he offered money to her in return. P.W.2 did not state before him that the accused rode the scooty in high speed and so out of fear she cried out as it was dark. P.W.2 did not tell him that the accused told her to wait near the scooty, while he went to keep something in the building then, he came out and caught hold of her and took her inside the building. P.W.2 did not tell her that the accused pushed her on the floor and got on top of her and gagged her mouth with a cloth. P.W.2 also did not tell her that the accused asked her not to tell the incident to anyone and offered to give her Rs.5000/- per month. P.W.3 did not tell her that the informant and the prosecutrix came crying to the house of the ward member. P.W.6 did not record the statement of one Sankar Kalita, owner of the building where the incident took place as he was reluctant to give his statement. P.W.6 went to the house of the neighbouring people Nipen Das but he was not present in the house. P.W.6 did not record the statement of any neighbouring people near the place of occurrence.

14. At the close of prosecution evidence, statement of the accused person U/S-313 Cr. P.C has been recorded. He denied committing the offence and declined to adduce evidence. During his examination U/S-313 Cr. P.C, the accused pleaded innocence and stated that he did not do anything with the victim, as alleged.

- 15. I have heard the arguments of the Learned Counsels for both the sides. Learned Counsel for the accused submitted that there are major contradictions in the evidences of the witnesses and that the accused has been falsely implicated in the case.
- 16. In this instant case, P.W.2 (prosecutrix) is the vital witness. Apart from her there are no any eye-witness to the incident. It is in the evidence of P.W.2 that while she was returning home by walking, then the accused was coming on his scooty and he insisted her to get up in his scooty . Then the accused took her to a under construction building and he asked her to wait near the scooty while he went to keep something inside the building. Her allegation is that the accused came out from the under construction building and caught hold of her hand and took her inside the building. He pushed her on the floor and got on the top of her. He also gagged her mouth with a cloth and tried to commit some bad acts with her. But she gave a blow on his face and fled away. Her further allegation is that while she was running away, the accused asked her not to tell the incident to any one and offered to give her Rs.5000/- per month. Evidence of P.W.2 reveals that she did not shout out when she was being taken away by the accused in the scooty to another direction instead of drooping her in the house. It also comes out that P.W.2 did not raise any hue and cry while the accused filled fuel in the scooty. It also appears from the evidence of P.W.2 that she did not raise any hullah or try to flee away when the accused took her to an under construction building and asked her to wait outside while he went to keep something inside the building. Her allegation is that the accused asked her to wait near the scooty while he went to keep something inside the building. Evidence of P.W.2 is found to be contradictory with the evidence of P.W 6 (I/O). P.W. 6 (I/O) confirmed that P.W.2 did not state before him that that the accused asked her not to disclose the incident to anybody and he offered money to her in return. P.W.2 did not state before him that the accused rode the scooty in high speed and so out of fear she cried out as it was dark. P.W.2 did not tell him that the accused told her to wait near the scooty, while he went to keep something in the building then, he came out and caught hold of her and took her inside the building. P.W.2 did not tell her that the accused pushed her on the floor and got on top of her and gagged her mouth with a cloth. P.W.2 also did not tell her that the accused asked her not to tell the incident to anyone and offered to give her Rs.5000/- per month. No where in her evidence, P.W.2 has alleged that the accused took her away forcibly in the scooty and that he made an attempt to sexually assault her or to any other acts with her. So, the evidence of P.W.2 is very much

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contradictory. Her evidence does not inspires confidence and it is not safe to rely upon

her sole evidence to convict the accused. Other P.Ws are all hearsay witnesses. It is in

the evidence of the P.W.3 that while she was sitting in the house of P.W.4, then P.W.1

alongwith her daughter (P.W.2) came to the house of Manjula Devi (P.W.4) and

narrated the incident. Evidence of P.W.4 reveals that the informant (P.W.1) came to

her house alone and narrated the incident.

17. In the midst of such contradictions in the evidences of the P.Ws, the

accused is entitled to get the benefit of doubt.

18. In the result, the prosecution has miserably failed to prove the case beyond

all reasonable doubt against the accused person. Accordingly, the accused person—

Jaydev Barman @ Hapa is held not guilty and he is acquitted of the offences U/S-18 of

the POCSO Act, 2012 and set at liberty forthwith.

19. His bail bonds shall remain in force for next 6 (six) months U/S-437 (A) Cr.

P.C.

20. The case is disposed of on contest.

21. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 08<sup>th</sup> day of August, 2019.

Special Judge,

Kamrup, Amingaon

Dictated and corrected by me

Special Judge,

Kamrup, Amingaon

# APPENDIX

# **Prosecution Witness:**

P.W.1, Musstt. Maijan Begum

P.W.2, prosecutrix

P.W.3, Smti. Gita Prasad

P.W.4, Smti. Manjula Devi

P.W.5, Dr. Kishore Kumar Pathak

P.W.6, S/I Sri Rana Bhuyan

# **Prosecution Exhibit**

Ext.1 is the statement of the victim recorded U/S-164 Cr. P. C.

Ext.2 is the medical report

Ext.3 is the sketch-map

Ext.4 is the charge-sheet

Special Judge, Kamrup, Amingaon