# CAUSE TITLE POCSO Case No. 51/15

Informant: Sri Mahabir Tanti,

S/o- Late Jibon Tanti, R/o- No. 2 Dillighat,

PS- Namrup,

District- Dibrugarh.

Accused: (1) Sri Pranab Tanti,

S/o- Sri Prakash Tanti, R/o- No. 2 Dillighat,

PS- Namrup,

District- Dibrugarh.

(2) Sri Pradip Sonar,

S/o- Sri Bal Bh. Sonar, R/o- No. 2 Dillighat,

PS- Namrup,

District- Dibrugarh.

# **ADVOCATES:-**

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

For the Defence: Mr. SK Todi, learned Advocate.

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

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 51/15 G.R. Case No. 2203/15

> > State of Assam

-Vs-

Sri Pranab Tanti

Charges: Under Section 366/34 IPC read with Section 4 of the POCSO Act.

Date of evidence on : 14-10-15, 08-02-16, 25-04-16, 24-05-16, 22-09-16 &

11-11-16,

Date of argument : 28-04-17. Date of Judgment : 29-05-17.

## **JUDGMENT**

- 1) The prosecution case as portrayed by the First Information Report is that on 06-08-15, the victim, say-X, was staying in Bokoli Sutradhar's house at Dillighat as guest. On that night, at about 9:00 pm, Pradip Sonar and Pranab Tanti convinced the minor victim that they will escort her back to her house. With such assurance, they brought the victim X from Bokoli Sutradhar's house. Before reaching home, Pradip Sonar and Pranab Tanti (hereinafter the accused) gagged the victim and committed rape on her. On the following morning, Pradip Sonar's wife, mother and sister-in-law assaulted the victim X and brought her back to her house and tied her up and threatened the victim's family members not to inform the police about the incident. Pradip Sonar also offered Rs. 300/- to the victim X. all these activities resulted in the delay in the lodgment of the ejahar. On 10-08-15, an ejahar was lodged with the police by Mahabir Tanti (hereinafter the complainant). The ejahar was registered as Namrup PS Case No. 123/15 under Section 376-D/323/506/34 of the Indian Penal Code (IPC in short) and SI Ganesh Chutia was endorsed with the investigation.
- 2) The investigating officer (IO in short) embarked upon the investigation. He recorded the statements of the witnesses and prepared the Sketch-Map of

the place of occurrence. He forwarded the victim to the Court for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). He seized some articles and also forwarded the victim for medical examination. The accused persons were also forwarded for medical examination. On finding prima facie materials, the IO submitted the Charge-Sheet against the accused under Sections 376-D/323/506/34 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act in short).

- 3) On appearance of the accused persons, copies were furnished and after hearing both the sides, a formal charge under Sections 366/34 IPC read with Section 4 of the POCSO Act was framed and read over and explained to the accused persons. Both the accused persons abjured their guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of ten witnesses including the medical officer (MO in short) and the IO. The defence cross-examined the witnesses in extenso to refute the charges. On the circumstances arising against them, the tenor of the answers of the accused persons depict the plea of total denial. Pradip Sonar admitted that he went to Jikini Sonar's house for water and then Jikini's mother asked him to escort the victim to her house. He denied of committing penetrative sexual assault on the victim or kidnapping the victim.
- 5) On the backdrop of the rival contentions proponed at the bar, the following points are apposite to be taken up for decision:

#### **POINTS FOR DETERMINATION:**

- 1. Whether the accused persons in furtherance of their common intention, kidnapped the victim X with intent that she may be compelled to illicit intercourse with another person?
- 2. Whether at the same time and place, the accused persons committed an offence of penetrative sexual assault on the victim?

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

- 6) To decide the case in its right perspective, it is necessary to delve into the evidence.
- 7) The victim testified as PW-1 that the alleged incident took place one month

back (from the 14-10-15). On the day of the incident, her father assaulted her, because she was unable to cook the food properly and so she took refuge in her friend's house and also had food in her friend's house. Jikini Sonar is her friend where she took shelter. When she was in Jikini's house, Pradip Sonar came to her house and assured her that he would escort her back to her house, as her parents were searching for her. She refused to go with Pradip Sonar, but as Jikini's parents asked her to go with Pradip Sonar, she went with Pradip Sonar to her own house. While she was proceeding towards her house along with Pradip Sonar, she met another person named Pranab Tanti who was standing on the road, a few distance from her house. Pranab Tanti suddenly pounced upon her from behind and gagged her and tied her hands with a dupatta and forcefully took her towards a nearby house. Then Pradip Sonar who was with them, slapped her and she fell on the ground. Then Pradip Sonar took off her sporting and panty and forcefully committed sexual intercourse with her. She tried to shout, but Pradip Sonar muffled her with his hand. Thereafter, Pradip Tanti committed sexual intercourse with her. Both Pradip Sonar and Pranab Tanti bound her by her hands feet and held her captive throughout the night in the nearby house. Pranab Tanti had sexual intercourse with her twice throughout the night and Pradip Tanti had sexual intercourse with her four times throughout the night. In the morning, at about 4:00 am, both the accused persons untied her and asked her to go home and threatened her not to divulge about the incident to anybody. Both the accused persons left the house. She immediately went to Jikini's house and stayed there mum without talking to anybody. Then Pradip Sonar's family members came to Jikini's house and assaulted her as Pradip was missing from his house throughout the night. Pradip's mother gave her two tight slaps. They all tied her and took her to her own house and thereafter tied her against a post and assaulted her. They threatened her parents. Meanwhile, her elder sister Kunti Patra came to their house and quarreled with them and rebuked them for assaulting her (X). Then Pradip Sonar's family members left their house. Her father lodged an ejahar with the police regarding the incident. The police recorded her statement and forwarded her for medical examination. She was also forwarded to the Court where the Magistrate recorded her statement.

8) In her cross-examination, she stated that she never went to school. She went

to Itanagar at the age of six years and stayed there for six years. She was well acquainted with the accused persons and she used to address them as Dada. She stated in her cross-examination that Pradip Sonar has a shop and she used to go to his shop occasionally. She admitted that initially, Pradip Sonar's mother, wife and elder sister-in-law assaulted her in Jikini Sonar's house. Pradip Sonar's wife assaulted her alleging that she was having illicit relationship with Pradip. She further admitted in her cross-examination that she did not inform about the incident to her father for four days and she informed her elder sister Kunti Patra about the incident on the next day of the occurrence. She further testified in her cross-examination that the house where the accused persons assaulted her sexually, belonged to a person named Saila. She further stated that she was attired in a sporting and jeans skirt at the time of the incident. She stated that she experienced pain in her private part at the time of the incident and she did not go to any doctor after the incident and before the lodgment of the ejahar. She further stated that Pradip Sonar's family members assaulted her, because they suspected her of having illicit relationship with Pradip and as they failed to catch them redhanded, they assaulted her. Her father lodged the ejahar as Pradip Sonar's family members assaulted her. On a later date, i.e., on 22-09-16, PW-1 admitted in her cross-examination that initially she stated her age as 12 years, because her sister told her so. When she got married in the month of November, 2015 during Kali Puja, she came to know from her father that her age was between 18-19 years and so she stated her age as 19 years on 22-09-16. She further admitted in her cross-examination that she came to Jikini's house. She further stated that she came to Jikini's house at 9:00 am in the morning and stayed there till the evening. At that time, she was attired in a pair of jeans shirt and pant. On the next day, she went to Jikini's house at about 5:00 am and then the sister-in-law, mother and wife of Pradip Sonar came along with her mother to Jikini's house at about 8:30 am. During the period from 5:00 am to 8:00 am, she did not inform anybody including Jikini and her family members about any sexual intercourse by the accused persons. She was assaulted in Lakshmi Sutradhar's house by her mother and family members of Pradip Sonar. Thereafter, she was brought back to her house and tied to a post and thereafter, Pradip Sonar's family members left their house. The First Information Report was lodged after four days of the

assault. She was accompanied to the police station by her elder sister Kunti while her father did not accompany her. Her sister got the ejahar written by somebody for her. She did not inform about the incident to her parents. On the night of the incident, Pradip came to Lakshmi Sutradhar's house and asked her for water and at that time, Lakshmi Sutradhar asked her to return to her house escorted by Pradip Sonar. Accordingly, Pradip Sonar accompanied her to her house. She knew both the accused persons since her childhood. She has admitted that her image in the society has been tarnished as a result of this incident. She further stated that she stated her age as 12 years to the Magistrate, because she was accompanied by her sister to the Magistrate's Court and then her sister told her that she was 12 years and accordingly, she gave her age as 12 years to the Magistrate. The police did not seize her garments. She further stated that she had no grievance against the accused persons as she is a married woman now.

- 9) The evidence of PW-1 clearly depicts that both the accused persons committed gang rape on her. She was forcefully taken to an abandoned house belonging to Saila, so there is also evidence of abduction against the accused persons. But is the evidence of PW-1 reliable. I do not think so. It is true that she has stated before the Magistrate and also sated before this Court that throughout the night Pradip Sonar sexually assaulted her and Pranab Tanti also had sexual intercourse with her. One had sexual intercourse with her four times and the other had sexual intercourse with her twice throughout the night. It is not at all believable that a minor girl who was sexually assaulted throughout the night will not sustain any injury. The medical officer (MO in short) in her opinion stated that no evidence of recent sexual intercourse was detected on her body or her private part.
- 10) The MO Dr. Nibedita Shyam testified as PW-6 that on 11-08-15, she examined the victim X in connection with Namrup PS Case No. 123/15 and on physical examination and radiological investigation done on the victim, she found that-
  - 1. Her age is above 14 years and below 16 years;
  - 2. Evidence of sexual intercourse not detected on her person:
  - 3. Evidence of recent injury not detected on her body or private part.

Ext. 1 is the Medico-legal Report and Ext. 1(1) upto Ext. 1(3) are her

- signatures. In her cross-examination, she testified that hymenal tear since the injury was already healed and the mental condition of the victim girl was found to be good at the time of examination. Thus the evidence of the medical officer belies the evidence of PW-1.
- 11) In her cross-examination as well as in her evidence-in-chief, PW-1 has stated that Pradip Sonar's wife and mother and sister-in-law assaulted her. PW-1's evidence clearly depicts that Pradip Sonar's wife suspects of an illicit relationship between Pradip Sonar and the victim X. There is every possibility to wreak vengeance, the victim gave false evidence against Pradip Sonar. There appears to be no reason why the victim concealed about such a brutal sexual assault on her for four days. It is also surprising why no injury was detected after such a brutal sexual assault throughout the night by the accused persons. The doctor also admitted in her cross-examination that the victim was in a good state of mind at the time of examination. It is not believable that a minor victim will be in a sound state of mental health if she is repeatedly sexually assaulted six times throughout the night. The statement of the victim under Section 164 CrPC was exhibited as Ext. 2. The Judicial Magistrate, 1<sup>st</sup> Class, Smti. Priyanka Hazarika Nayar testified that on 11-08-15, she recorded the victim's statement under Section 164 CrPC in connection with Namrup PS Case No. 123/15. Ext. 2 is the victim's statement and Ext. 2(1) is her signature. Despite the fact that the victim's statement under Section 164 CrPC and her testimonies incriminates the accused persons, yet the contradictions writ at large belies her evidence. It is apt to mention at this stage that her friend Jikini Sonar was not examined as a witness. This is a lapse in evidence. Jikini's mother Lakshmi Sutradhar testified as PW-3 that both the accused as well as the victim are known to her. About six months back, one evening, at about 5:30 pm, the victim X came to their house and stayed. Then she asked the victim X whether she would stay in their house or return to her own house. Then X replied that her father would beat her if she returned home and so X refused to return to her own house. She then served food to X. After some time, Pradip Sonar visited them and had water and he was about to leave, when the victim X expressed her desire to return to her house with Pradip Sonar and thereafter, the victim X left with the accused Pradip Sonar. Thereafter, they retired to bed. On the next morning, at about 5:00 am, the victim X again returned to their house

and woke her up. She opened the door and let her in and asked X that why she had returned again to her house, as on the previous night she (X) already left for her own house. Then X informed her that she did not return home after leaving their house on the previous night. But that night, she stayed in a nearby house. After a little while, the victim's mother and elder sister-in-law of the accused came to their house and both the mother of the victim and the accused person's sister-in-law assaulted the victim in their house precincts. Thereafter, they took the victim X with them. Later she learnt that police had taken Pradip and Pranab with them, because the victim's family members lodged an ejahar against the accused persons.

- 12) Thus, it is clear from the evidence of Jikini's mother that the victim is the one who proposed to leave with the accused Pradip Sonar to her house. The entire incident was initiated by the victim X. In her cross-examination, Jikini's mother testified that her daughter is 18 years and the victim is older than her daughter. The victim used to work as domestic help in Itanagar before the incident. She stated that the accused Pradip Sonar did not voluntarily take the victim with him. When the accused person Pradip Sonar was about to leave after drinking water, the victim X called him and expressed her desire to return to her house accompanied by Pradip Sonar. She (PW-3) suggested that she would drop the victim escorting her back to her house, which the victim refused. Thus, it is clear from Jikini's mother as PW-3 that the entire episode was authored by the victim X.
- 13) Mahabir Tanti testified as PW-2 that the alleged incident took place about two months back. On the day of the incident, he scolded his daughter and as a result, his daughter took shelter in Bokoli Sutradhar's house. On the next day, he asked his wife to look for his daughter and accordingly, his wife found their daughter X sitting in Bokoli Sutradhar's house. Jikini Sonar is Bokoli's daughter. At that time, Pradip Sonar's wife and some other people brought his daughter back to his house. His daughter informed him that the accused persons committed rape on her. As he resides alone in the river side, so he was terrified to lodge the ejahar immediately against the accused persons. After four days, he lodged the ejahar which was written by a person. This part of the evidence of PW-2 which explains the delay in the lodgment of the ejahar. In the ejahar, it is stated that the delay in lodgment of the same was

caused as his daughter was brought back and tied up in their house and as Pradip Sonar gave Rs. 300/- to his daughter, and in contemplation and anticipation, he lodged the ejahar on 10-08-15. In his cross-examination, he stated that his daughter was 19 years. He did not know in whose house the alleged incident of rape took place. He also stated that his elder daughter Kunti Patra got the ejahar written by some other person and when he went to the police station, his daughter asked him to affix his thumb impression on a piece of paper.

- 14) Regarding the evidence of PW-2 Mahabir Tanti, it is held that his evidence cannot be relied upon. The evidence of the victim herself was not found reliable. The entire episode appears to be fabricated.
- 15) The IO is a formal witness and he conducted the investigation as led by the complainant and the victim. The IO SI Ganesh Chutia testified as PW-10 that on 10-08-15, while he was posted at Namrup, the Officer-in-charge endorsed him with the investigation on receipt of the First Information Report from Sri Mahabir Tanti. He embarked upon the investigation of the Namrup PS Case No. 123/15. Ext. 4 is the First Information Report and Ext. 4(1) is the signature of the Officer-in-charge with endorsement. Ext. 5 is the printed proforma of the First Information Report and Ext. 5(1) is the signature of the Officer-in-charge of Namrup Police Station. He recorded the statement of Mahabir Tanti in the police station and proceeded to the place of occurrence and prepared the Sketch-Map. Ext. 6 is the Sketch-Map and Ext. 6(1) is his signature. He also recorded the statements of witnesses and the victim and forwarded her to Assam Medical College & Hospital, Dibrugarh for medical examination. He forwarded the victim to the Magistrate for recording her statement under Section 164 CrPC. He arrested the accused and forwarded them to the Court. He seized one cotton towel and Ext. 3 is the Seizure-List and Ext. 3(2) is his signature.
- 16) The Judicial Magistrate recorded the statement of the accused Pradip Sonar. This confessional statement of Pradip Sonar was not exhibited by the prosecution. There is retraction of confession by the accused Pradip Soar. He has admitted in his confessional statement that the victim on the night of the incident was unwilling to return to her house and she suggested to stay with him overnight in an abandoned house. That night, as suggested by the victim, they had physical relationship. Although the confessional statement

was not exhibited, yet the confessional statement, if taken into consideration does not implicate that the accused is complicit. The confessional statement is not a confession in the real sense, because the accused Pradip Sonar has stated that the victim suggested to have sexual relationship. There is evidence of consensual sexual relationship between the victim and the accused. Moreover, the victim has stated in her cross-examination as PW-1 that she is 19 years. Her father has stated in his cross-examination as PW-2 that the victim is 19 years and Jikini's mother has also stated in her cross-examination as PW-3 that the victim is 19 years. Therefore, it can be held that the relationship between Pradip Sonar and the victim was not against the will of the victim. The consent of a major girl indulging in sexual activity cannot be considered as an incident of rape. The evidence of the victim was not found reliable. Her evidence is too farfetched and sketchy. The evidence of other witnesses does not at all implicate that the accused is complicit.

- 17) Sri Rajib Pradhan testified as PW-4 that both the accused persons are known to him. The alleged incident took place about six months back. After the incident, the police visited their village and searched for the accused persons. He learnt from the police that the accused committed the shameful act on the victim. In his cross-examination, he denied any personal knowledge about the occurrence. He heard about a quarrel that took place after the incident and the victim's mother and the accused person's sister-in-law assaulted the victim.
- 18) Similarly, Smti. Saraswati Sutradhar testified as PW-5 that the alleged incident took place about six months back. When the police visited their village and took away the accused persons, she learnt that quarrel took place and the victim's family members lodged a case.
- 19) Sri Motilal Sonar testified in a similar manner that the accused Pradip Sonar is his younger brother. The incident took place in the year 2015 and at that time, he handed over a towel to the IO. At that time, his younger brother Pradip was also present. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature. The seizure of this towel does not give any hint.
- 20) Sri Nandeswar Tanti testified as PW-9 that both the parties are known to him. The incident took place a year ago. During investigation, the police visited their village and then he and Motilal Sonar went to the police station along with the accused persons. The police arrested the accused persons with

- reference to a case lodged by Mahabir Tanti regarding rape on his daughter.
- 21) Recapitulating the entire evidence, it is held that the witnesses PW-4, 5, 8 & 9 did not have any knowledge about the incident. Having heard about a stray incident of rape, they have not described who committed rape. They also did not know about the incident and the victim was also not identified by them with clarity. The evidence of other witnesses does not at all implicate that the accused persons abducted the victim in furtherance of their common intention. There is no hint of abduction with intent that the victim will be seduced to illicit intercourse. Although the doctor gave the age of the victim as below 16 years, yet it is held that the victim is a major. The victim herself and her father and Jikini's mother testified in their cross-examination that the victim was major at the time of incident.
- 22) Regarding the age of the victim, I would like to divert the attention towards Modi's Medical Jurisprudence and Toxicology, 21<sup>st</sup> Edition:

"It is observed that the error in case of age based on ossification test may be + - 3 years."

- 23) In this case, the victim herself testified that she was a major at the time of the incident and taking into consideration the doctor's evidence, the victim appears to be a major if we consider Modi's Medical Jurisprudence. According to the doctor, the victim was between 14 to 16 years and adding + 3 years, the victim's age tantamount to be 19 years on the higher side.
- 24) In view of my foregoing discussions, it is thereby held that the victim was a major at the time of incident
- 25) It has already been held that the evidence of the victim does not inspire confidence. A false case has been foisted against the accused persons at the whim of the victim. The prosecution failed to prove beyond a reasonable doubt that the accused persons in furtherance of their common intention kidnapped the victim X with intent that she may be compelled to illicit intercourse with another person. The prosecution also failed to prove beyond a reasonable doubt that the accused persons committed penetrative sexual assault on the victim.
- 26) Thereby, the accused persons Sri Pranab Tanti and Sri Pradip Tanti are acquitted from the charges under Section 366/34 IPC and Section 4 of the POCSO Act on benefit of doubt and are set at liberty forthwith.

27) Destroy the seized article as per law.

Judgment is signed, sealed and delivered in the open Court on the  $29^{\text{th}}$  day of May, 2017.

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

#### **APPENDIX**

#### List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Sri Mahabir Tanti;
- 3. PW-3 Smti Lakshmi Sutradhar;
- 4. PW-4 Sri Rajib Pradhan;
- 5. PW-5 Smti. Saraswati Sutradhar;
- 6. PW-6 Dr. Nibedita Shyam;
- 7. PW-7 Smti. Priyanka Hazarika Nayar;
- 8. PW-8 Sri Motilal Sonar;
- 9. PW-9 Sri Nandeswar Tanti;
- 10. PW-10 Sri Gonesh Chutia.

#### List of Exhibits:

- 1. Ext. 1 Medico-legal Report;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 4 Ejahar;
- 5. Ext. 5 XXXX;
- 6. Ext. 6 Sketch-Map & Medico-legal Report;
- 7. Ext. 7 Medico-legal Report;
- 8. Ext. 8 XXXX; and
- 9. Ext. 9 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh