

Present : Shri C. Das

Judge, Special Court Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.12/2018(OLD NO.18/17)

u/s 4 of POCSO Act

State

-versus-

Sri Gautam Barman

.... Accused

Appearance:

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

For the accused : Ms. S. Kachary, Advocate

Date of evidence recorded: 29.5.17, 1.7.17, 27.8.18

Date of argument

: 23.9.19

Date of judgment

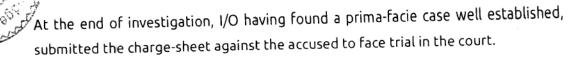
: 4.10.19

JUDGMENT

1. The case of the prosecution briefly, is that on 12.12.16, the complainant Sri Sudhangshu Laskar lodged a FRI before the Officer-in-charge of Gobardhana police station, alleging inter-alias that on 12.10.16, in absence of anybody in the house, the accused trespassed into his house and by inducement, took away his 11 years victim daughter (named is withheld) to the room of the accused. Thereafter, the accused committed rape on his victim daughter against her will.

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2. Accordingly, the police registered the Gobardhana PS. Case No.329/16 and started the investigation. During the investigation, I/O visited the place of occurrence, examined the witnesses including the victim girl. She was sent for medical examination and to record her statement u/s 164 CrPC. I/O seized the birth certificate of the victim girl and gave zimma of the victim to the complainant.



- 3. After appearance of the accused in the court, he was immediately furnished with copy of the case. Thereafter, upon hearing of the parties and on perusing the material on record, the charge u/s 4 of POCSO Act was framed against the accused. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried.
- 4. The prosecution during the trial, examined as many as, 9(nine) witnesses including I/O and M/O to support its case. In the statement recorded u/s 313 CrPC., the accused denied all incriminating circumstances appeared against him in the evidence. The accused however, declined to adduce any evidence in defence. The argument of the parties was heard at length and evidence on record is perused carefully.

POINT FOR DETERMINATION:

5. Whether on 12.10.16, at night at Simlaguri under Gobardhana police station, the accused committed penetrative sexual assault on the victim girl, aged about 11 years and daughter of complainant Sudhangshu Laskar;

DECISION AND REASON THEREFORE:

- Learned Public Prosecutor initiating the argument, submitted interalias that story of the prosecution discloses that the accused committed penetrative sexual assault upon the minor victim girl by entering into the house of the complainant in his absence and took the victim to the house of the accused. Hence, in case of sexual assault, the entire case of the prosecution rests upon the evidence of the sole victim. The victim of the case was duly supported by the other prosecution witnesses and medical evidence. He submitted further that from the evidence on record, the innocence of the accused is not consistent rather it implicated the accused in the occurrence. The evidence of the prosecution witnesses on record, has been able to bring home the charge against the accused and therefore, the accused is liable to be convicted as per law.
- 7. On the other hand, learned counsel for the accused, opposed the above submission made by learned Public Prosecutor, submitted that the evidence

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does not justify a conviction of the accused. It was submitted that the evidence on record does not satisfy the conditions to attract the offence u/s 4 of POCSO Act. There is no ingredient in the evidence of the prosecution to implicate the accused in the offence. There may be evidence that the accused came to the house of the complainant but that does not hold good that the accused committed any other offence against the victim girl. There is also, delay in lodging the FIR which can discredited the reliability of the prosecution case. Under such circumstances, the accused ought to get the benefit of doubt, it maintained.

- 8. Upon hearing the above submissions advanced by learned counsels for the parties, it is now necessary to go through the evidence on record and to reproduce the same herein. It appears that the prosecution examined the complainant Sri Sudhangshu Laskar as PW1 who is the father of the victim girl as well. He deposed inter-alias in the court that the victim was 11 and half years at the time of occurrence who was raped by the accused. He was informed about the occurrence by the victim after three months of the occurrence. The accused had threatened the victim girl for which she kept mum. Hence, he filed the ejahar. The police sent the victim girl for her medical examination and to record her statement in the court.
- 9. In the cross-examination, PW1 stated that he could not say the contents of the ejahar. Apparently, PW1 is only filed the ejahar. However, there was delay of about three months in reporting the incident the reason of which is mentioned by PW1.
- 10. PW2 Smti. Mamoni Laskar is the mother of the victim girl as well as, the wife of PW1. She deposed inter-alias that the victim was 10/11 years old at the time of occurrence. The residence of the accused is adjacent to her house. On the fateful night, she was not present in her house. Hence, the victim was stayed with her two younger brothers while she went to Barpeta hospital. After three months, one day in the evening, she went to the house of the accused and on return to home, she asked the victim girl to have a look at the work done by the daughter of the accused. Then, the victim declined to visit the house of the accused. On her inquiry, the victim told her that the wife of the accused prevented her to visit the house of the accused. On asking the reason, the victim told her that the accused caught her breast and after opening her pant, the accused committed sexual intercourse on her private part. The victim told her that the accused threatened her that if she disclosed the incident, the accused will not only beat her but also, beat

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ther brothers. So, she reported the matter to PW1 who filed the case. The police sent the victim for medical examination and to record her statement in the court. Since the victim delayed in disclosing the incident, there was delay in filing the ejahar.

- 11. In the cross-examination, PW2 denied that she did not state to the police earlier that the victim told her that the accused caught her breast and after opening her pant, the accused committed sexual intercourse on her private part. Apparently, PW2 corroborates the version of PW1.
- PW3 is the victim girl. Her name is withheld due to bar of law. She 12. deposed that on the fateful day, at night, the daughter of the accused called to their house. Her parents went to hospital. She was sleeping with the daughter of the accused. She along with the accused, his wife and children were sleeping on the same bed. The accused put his hand on her breast. Thereafter, the accused opened her pant followed by the accused put his penis into her vagina. She started to weep. The wife and children of the accused were at that time fast asleep. The accused asked her not to cry and told her that if she disclosed the incident to anybody, then, the accused will take her life with her brothers. Hence, out of fear, she did not disclose the incident to others. After three months, she disclosed the incident. After the incident, she did not visit the house of the accused. After three months. PW2 asked her the reason for her not to visit the house of the accused and then, she disclosed the incident to her mother. After filing the case by PW1, the police sent her medical examination and to record her statement. Ext.1 is her statement with her signature.
- In the cross-examination, PW3 denied that on the fateful night, the accused went to other place for cooking purpose. She raised 'hulla' at the time of occurrence. She used to share everything with the daughter of the accused and she reported the incident to the daughter of the accused. PW3 denied that on the day of marriage, her uncle Biplab Barman committed sexual intercourse with her and she disclosed it to the daughter of the accused and to cover up the same, her she disclosed her to depose falsely. Apparently, PW3 narrated the incident clearly to implicate the accused in the occurrence.
 - 14. But the medical evidence tendered by PW4 Dr. Anima Boro does not corroborate the version of PW3. It is evidence of PW4 that on 13.12.16 at FAAMC & hospital, Barpeta, on that day at about 1 pm, on police requisition, she examined

W3 aged about 12 years, daughter of PW1 being identified by lady police and found as follows;

<u>History</u>: history of alleged sexual assault by the accused of same village 3 months before.

Physical examination: one black mole on upper lip; Height- 151cm., Weight- 30kg; Chest girth at nipple level- 67cm., Abdominal girth at navel level- 65cm., Breast – not developed; Puberty- not attained; Mental condition- stable; Gaitnormal; Intelligence- average; Wearing garments and any suspected stains present- not stain detected; Bodily injury- no bodily injury detected;

Genital examination; Pubic hair- absent; Vulva (Libia majora & Libia minora) — normal; Hymen- torn; Vagina- admits one finger easily; Cervix and Uterus-uterus not palpable per abdominally; Fourchette and perineum- normal; Vaginal swab collected; Result of vaginal swab smear examination- no spermatozoa is seen on microscopic examination of vaginal swab slide;

<u>Result of x-ray investigation</u>: plate no.MLC-208/ dated 13.12.16. wrist joint-epiphyseal union is not completed; elbow joint- epiphyseal union is completed; shoulder joint & pelvis- epiphyseal unions are not completed;

<u>Opinion</u>: (1) There is no recent sign of sexual intercourse; (2) There is no injury on her private parts; (3) According to x-ray report, her actual age above 12 years and below 14 years at present.

- 15. Accordingly, PW4 filed the medical report vide Ext.2 with her signature. The fact that PW4 examined PW3 medically is corroborated by PW1 and 2 with I/O. Apparently, the medical evidence does not lend support to the claim of PW3. However, according to medical evidence, the age of PW3 is below 18 years. No dispute is raised over the finding on the age of PW3. Hence, it appears that PW3 was a child at the time of occurrence within the meaning of Section 2(d) of POCSO Act.
- 16. PW5 Smti. Janmoni Das was declared hostile. But her evidence discloses that she heard that the accused committed rape on PW3. The police came and examined her. Her residence is just opposite to the house of the accused in between there is a road.
- 17. The evidence of PW6 Smti. Ratna Barman is that she heard that the accused was caught be police due to committing rape on PW3. Hence, such evidence does not come to help the prosecution.



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PW7 Sri Sudhan Barman deposed that PW1 informed him that the accused rape on PW3. Accordingly, he reported it to his uncle. On the inquiry, PW3 disclosed that the accused committed rape on PW3 at the residence of accused. Thus, he came with PW1 to the police station. PW3 was 11/12 years old at the time of occurrence. The police seized the birth certificate of PW3 vide Ext.3 with his signature.

- In the cross-examination, PW7 denied that he did not state to police 19. earlier that he heard the incident from the mouth of PW3. Thus, the evidence of PW7 corroborates the version of PW1 and 2.
- 20. PW8 Sri Jayanta Das deposed in the court that he was reported about the incident by PW7 and called him to come. Accordingly, he came to the house of PW7 who informed him that the accused called PW3 and committed illwork with her. PW7 is the neighbour of PW1. Therefore, he asked PW3 why she did not disclose the incident to her relatives. Then PW3 told that the accused threatened her if she disclosed the incident to anybody, then, the accused will take the life of her brother. Hence, the FIR was lodged. The police seized the birth certificate of PW3 vide Ext.3 with his signature.
- 21. In the cross-examination, PW8 stated that he could not say the date of birth of PW3. The house of the accused is near his residence. He denied that he did not state to the police earlier that he asked PW3 about the incident and the accused threatened PW3.
- 22. The evidence of I/O PW9 Siddik Ali Ahmed is that on 12.12.16 while he was working at Simlaguri OP., on that he received the FIR from PW1 and he accordingly, lodged GDE No.182 dated 12.12.16 and forwarded it to O/C Gobardhana police station. He proved the FIR vide Ext.4 with his signature. He examined PW1 and visited the place of occurrence and drew up its sketch map vide Ext.5 with his signature. He examined the witnesses and seized the birth certificate Judge Spi Court to record her statement u/s 164 CrPC. He arrested the accused. The O/C Gobardhana police station registered the case No 200/16 investigate the case. He collected the medical report of PW3. At the end of investigation, he filed charge-sheet vide Ext.6 against the accused with his signature.

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In the cross-examination, I/O stated that the occurrence took place on 12.10.16 and the FIR was lodged on 12.12.16 after two months. The cause of delay in filing the FIR was mentioned as receiving repeated threatening of killing of the brothers of PW3 by the accused. In this connection of threatening, no FIR was lodged. As per Ext.4, it cannot be ascertained who wrote the FIR. As per Ext.5, the place of occurrence is the house of the accused. There is no mention of number of room, bed or other furnitures in the house of the accused in Ext.5. There are several houses near the house of the accused in Ext.5. I/O stated that PW2 did not state him previously that PW3 told her that the accused after removing her pant, committed sexual intercourse with her and touched her breast.

- Thus, from the evidence of the prosecution witnesses so tendered in 24. the case, it appears that the occurrence took place in the residence of the accused on the fateful night when PW3 came to stay in the house of the accused. It shows that PW1 is closed neighbour of the accused and as such, there was visiting terms between the two families. PW3 also, visited the house of the accused and had closeness with the daughter of the accused. Apparently, except PW3, there is no other prosecution witnesses who could tender direct evidence of the occurrence. Hence, the evidence of PW3 is important for the prosecution case. She is the sole victim of the occurrence and at the same time, she is a child witness of the prosecution case. Therefore, her evidence needs to assess properly since such witness is very vulnerable to being tutored by others.
- In State of Punjab vs. Gurmit Singh AIR 1996 SC 1393, Hon'ble Supreme Court observed that "of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all aspects, we show little or no concern for her honour. It is a sad reflection in the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the

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statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which mat lend assurance to her testimony short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the back ground of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. The courts while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutry is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity least that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

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26. In the present case in hand, it cannot be disputed that the victim is a child witness. So in one hand, it can be said that the victim child being an innocent one, does not speak a lie to spare the real culprit. But at the same time, she is likely

to be tutored by elderly relatives. Hence, reliability of such victim is required to assess carefully. The above guide lines in deed, precious to decide the case. Admittedly, she cannot be treated like an accomplice with the accused. Her evidence is sufficient if found reliable wholly to base a conviction against the accused.

- So far as this case is concerned, it appears that the accused being 27. closed neighbour, is known to PW1, 2 and 3 properly. Since the accused is residing near the residence of PW1, it is possible that the accused and family of PW1 used to meet regularly on day to day basis. It appears from the evidence of PW1 and 2 that prior to three months of the occurrence, there appears no any occasion for PW2 to visit the house of the accused. Hence, PW2 asked PW3 to visit the residence of the accused to watch something prepared by daughter of the accused which she stoutly refused. Then PW3 disclose the incident as the reason for her refusal to visit the residence of the accused. Accordingly, PW1 and 2 stated to be acquainted with the incident happened to PW3.
- On the other hand, PW3 did not disclose the incident till lapse of 28. three months due to fear put by the accused. In between the period of three months till the day of revelation of incident by PW3, there is no evidence on record to show that PW3 was really under fear of death from the accused. If the accused put her in fear of death, her behaviour ought to be changed during that three months period which might have come to the notice of her parents. But nothing has been seen in the evidence of PW1, 2 and 3. Major deficiency in the case of the prosecution is that there is lack of support of medical evidence. There is no evidence seen from the doctor that PW3 was subjected to any sexual assault in the light of \$ection 4 of POCSO Act. The evidence of PW3 does not come near to the requirement of assault within the meaning of Section 351 IPC.
- Delay must be the prime reason for such deficiency in the case. The 29. delay is stated to be the threatening given by the accused to PW3 not to disclose. But it is already observed that no behavioral change is noticed in the evidence of Judge Mushalouf PW3 which can draw an inference that PW3 was under pressure of such threatening of the accused. Thus, the explanation of delay is con convincing enough to rely the prosecution case. It is highly probable that PW3 might be tutored by some elderly person to speak by taking the plea of delay on the ground of threatening of the accused. Thus, doubt comes in the evidence of the prosecution witnesses. Accordingly, the accused is given the benefit of such doubt.

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Under the above facts and circumstances of the case, the prosecution has not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 4 of POCSO Act. The accused is therefore, acquitted and set at liberty. His bail bond shall however, remain in force for another 6 months from today u/s 437-A CrPC. The seized article shall be given to the owner as claimed. Forward a copy of judgment to the District Magistrate, Baksa, Mushalpur u/s 365 CrPC. It appears that the victim of the case is entitled to get compensation u/s 357 CrPC. Accordingly, this court recommends payment of such compensation by DLSA, Baksa district to the victim immediately.

31. Given under the hand and seal of this court on this 4th day of October 2019.

Dictated and corrected by:

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Judge Sat Court Baksa Mushalour Judge, Special Court

Baksa, Mushalpur

Judge Spi Court Judge Special Court Baksa Mushal Baksa, Mushalpur

Typed by:

P. Deka, Com. Typist



List of prosecution witness:

PW1 ... Sri Sudhangshu Laskar ... complainant

PW2 ... Smti. Mamoni Laskar

PW3 ... victim girl (name withheld)

PW4 ... Dr. Anima Boro ... m/o

PW5 ... Smti. Jonmoni Das

PW6 ... Smti. Ratna Barman

PW7 ... Sri Sudhen Barman

PW8 ... Sri Jayanta Das

PW9 ... Mr. Saddik Ali Ahmed ... I/o

List of defence witness:

Nil

List of documents exhibited:

Ext.1 ... statement of victim u/s 164 CrPC

Ext.2 ... medical report

Ext.3 ... seizure list

Ext.4 ... FIR

Ext.5 ... sketch map

Ext.6 ... charge-sheet

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