Present : Shri C. Das

Judge, Special Court Baksa, Mushalpur



JUDGMENT IN SPECIAL POCSO CASE NO.56/2018

u/s 8 of POCSO Act

State

versus-

Sri Jiten Boro

.... Accused

Appearance:

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

For the accused : Mr. P. Sarmah, Advocate

Date of recording evidence: 15.11.18, 17.1.19

Date of argument: 15.2.19

Date of judgment: 1.3.19

JUDGMENT

1. The case of the prosecution briefly, is that on 27.5.17, the complainant Sri Gopinath Khandal lodged the FIR before the In-charge of Darranga Mela out post, alleging inter-alias that on 14.5.17 at about 8.30 pm while his 16 years old daughter/ victim was returning home after watching Bihu function held at Darranga Mela, the accused person attempted to commit rape on her by obstructing and pulling her from the front of Shasipur Gyanjyoti Shisu Niketan. His daughter somehow, managed to escape after scuffling with the accused. Thereafter, the accused threatened his daughter not disclose the incident to other for which there was delay in informing the incident to him by his daughter/ victim. It is further alleged that since the accused continued to threaten his daughter/ victim, she now reported the incident to him.

Judge Spl. Court Baksa, Mushalpur 2. The police accordingly, lodged the Darrangamela OP GDE No.407 dated 27.5.17 and forwarded the said FIR to the Officer-in-charge of Tamulpur police station for registering a case. Hence, the Officer-in-charge of Tamulpur police station registered the Tamulpur PS. Case No.145/17 and started its investigation. During the investigation, the I/O visited the place of occurrence, drew its sketch map and examined the witnesses including the victim girl. The I/O also, sent the victim girl for recording her statement u/s 164 of Code of Criminal Procedure (herein after referred as CrPC). The I/O arrested the accused during the investigation. At the end of the investigation, the I/O having found a prima-facie well established, submitted the charge-sheet against the accused to face trial in the court.

- The accused when appeared before the court in response to issue of process, he was furnished with the copy of the case. After hearing both the parties and on perusal of the material on record, the charge u/s 8 of Protection Of Children from Sexual Offenses Act (herein after referred as POCSO Act) was framed against the accused. The charge is 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, 6(six) witnesses including the victim and the I/O to support its case. The accused took the plea of total denial in his statement recorded u/s 313 of CrPC., and alleged that he saw the victim with a boy namely; Karan at the school premises alone at night and due to his presence, Karan fled away and as such, he sent the victim to her home. However, the accused declined to adduce any defense evidence. The argument of the parties was heard at length and perused the evidence on record.

POINT FOR DETERMINATION:

5. Whether on 14.5.17 at about 8.30 pm at Shasipur near Giayanjyoti Shisu Niketan, the accused committed sexual assault upon the victim girl who is the minor daughter of the informant Sri Gopinath Khandal;

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DECISION AND REASON THEREFORE:

6. Learned Public Prosecutor at the out set submitted that the evidence of the prosecution witnesses clearly discloses that the occurrence was

taken place at night at the school premises when the victim was escorted by her friend. At that time, the accused appeared at the spot and after departure of her friend, he took advantage of the victim girl being alone at night, tried to outrage her modesty by using force. He submitted that the evidence of the prosecution witnesses is consistent and there is no ground to disbelieve their versions. That apart, the sole evidence of the victim is found reliable and the defense failed to create any doubt over her clear testimony which is supported by other witnesses of the prosecution. According to him, the prosecution has been able to bring home the charge against the accused and proved the case against him and as such, he urged to convict the accused as per provisions of law.

- Countering the above submissions of learned Public Prosecutor, 7. learned counsel appearing for the accused, submitted that if the evidence of the prosecution witnesses particularly, the testimony of the victim girl, it appears that the allegation against the accused is totally false and fabricated. According to him, since the victim girl was found in compromising position at a local school at night by the accused, the victim brought the false allegation against the accused in order to save her skin. He submitted that major lacuna in the prosecution case is that it did not examine the witness namely; Karan who accompanied the victim at the relevant time of occurrence. If there was nothing happened between the victim and Karan at the lonely place at night, Karan would not have ran away from the place of occurrence, leaving alone the victim at the spot that too at the hands of the accused. Thus, there is sufficient ground to disbelieve the versions of the prosecution witnesses, he maintained. Further, learned counsel for the accused pointed out that there is delay in lodging the FIR due to the victim kept the entire incident mum without disclosing it to anyone for several days. He submitted that threatening of the accused continuously to the victim after the incident is not substantiated by seizure of mobile sets by the I/O and as such, there is doubt if the accused was involved in the crime as alleged by the prosecution. Hence, he prayed to acquit the accused from the charge of the offense.
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- 8. In the light of above submissions, the evidence on record is carefully gone through. But for convenience of discussion and brevity, the evidence of the prosecution witnesses on record is reproduced herewith. The prosecution examined the victim girl as PW1. Her name is withheld due to bar of law. PW1 stated in her evidence in camera that she was returning home after attending to Bihu function at Shasipur along with her brother Karan Subba. On her reaching Gyianjyoti school, Shasipur, Karan Subba wanted to go home on receipt an urgent

call. At that time, the accused was present there. Karan Subba requested the accused to drop her at her house. Accordingly, the accused took her towards paddy field by pulling her hands and wanted to commit untoward incident. She protested against such act of the accused. Hence, the accused threatened her that if she did not allow to commit physical relation with him, the accused will publish some defamatory message in the village. When the accused forwarded towards her, she somehow dashed him and fled away towards her home. On the fateful night, she did not disclose the incident to her parents. On the next morning, she reported the incident to her sister/friends Sona Sarma, Kanchan Acharjya and Bina Sarma. Accordingly, her said friends approached the accused to inquire about the incident. Hence, the accused threatened them alike to her. On next day, when she went to the market, she came to know that the accused published some defamatory message against her to malign her reputation. Thereafter, she reported the incident to Gorkha Student Union. The members of Gorkha Student Union took her to the house of the accused to inquire about the incident. But the accused was not present in his house. He was in neighbors' house. She was kept seating nearby for her safety. At that time family members of the accused came and blamed her for the incident and started to assault her physically. Under such situation, the Gorkha Student Union took her to police station. The police inquired about the incident from her. The police called the accused to the police station. The accused came and confessed his guilt. Her father also, came to the police station and filed the FIR. The police sent her to record her statement vide Ext.1 with her signatures. She stated that she was 16 years of age at the time of occurrence and a student of class-X at that time.

In the cross-examination, PW1 stated that she was presently, 9. working as yoga teacher for one year at a local institute. Her date of birth was 22.8.2000. on the fateful day, she went to Bihu function with Sangita Sarma. Lokmaya Karti and Bina Sarma. But she returned home with Karan Subba and his sisters; Shanti and Ruchi. According to her, the Giyanjyoti school was at a distance of 25 meters from her home. Shanti and Ruchi separated from her before reaching the said school. So she was taken to her home by Karan Subba only. She forcefully argued with the accused in protest when the accused caught her hand. But Karan did not come back near to her. Thus, from the evidence of PW1 it appears that the adge Spl. Court accused attempted to commit physical relation with her and on her refusal, the Baksa, Mushalpur accused threatened to publish some defamatory message against her reputation in the village. But she managed to escape from the clutch of the accused. Apparently PW1 did not report the incident immediately to her parents or closed relative.

- 10. PW2 Sri Gopinath Khandal is the informant of the case and the father of the victim girl. He proved the FIR vide Ext.1. He stated that on the fateful day at about 7 pm., the accused caught the victim girl near Gyanjyoti school when the accused took the victim to her home from Bihu function. The victim reported him about the incident after 3 /4 days. Since the accused is a local boy from his village, he did not file the FIR immediately with the hope that the village committee will settle the matter. But the committee did not do anything. Hence, his wife and the victim reported the incident to Gorkha Student Union. The members of the Gorkha Student Union took the victim to the house of the accused to inquire about the incident. But a quarrel took place between them at the house of the accused. Hence, his wife and the victim reported the incident before the police. The police called him to the police station and he filed the FIR accordingly. The police arrested the accused. The victim was 17 years of old at the time of occurrence.
- 11. In the cross-examination, PW2 stated that the victim did not report the incident to him directly. The occurrence took place when Karan Subba came to drop the victim at his residence from the Bihu function. According to him, the victim was born in 2001. Thus, it appears from the evidence of PW2 that he was not an eye witness of the occurrence. But he lodged the FIR to set the law in motion.
- 12. PW3 Smti. Lokmaya Karaki deposed in the court that on the fateful day, at about 6.30 pm., the victim went with her to attend the Bihu function at Melabazar. Thereafter, she could not say where the victim left from her. She heard that something was happened between the victim girl and the accused. Hence, PW3 does not disclose anything about the incident. She is not direct witness of the occurrence.
- 13. PW4 Smti. Sangita Sarma deposed that on the fateful day, at about 6.30 pm., the victim went with her to Bihu function with PW3. Thereafter, the victim left her at the Bihu function. After 4 days of the occurrence, she came to know from the victim that the accused attempted to commit some indecent act against the victim. The evidence of PW4 does not disclose about the incident in details though she was not an eye witness.

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14. PW5 Ms. Bina Sapkata deposed that on the fateful day at about 6.30 pm the victim went with her and PW3 and 4 went to the Bihu function at Melabazar. But in the Bihu function, the victim separated from her as such, she could not say

when the victim returned to her home. Subsequently, she came to know that the accused attempted to commit ill purpose against the victim on the fateful night. Thus, PW5 could not give proper account of the occurrence.

- 15. PW6 Sri Mahendra Prasad Ray is the I/O of the case. He deposed inter-alias that on the basis of FIR submitted by PW2, the Darrangamela OP GDE No.407 dated 26.5.17 vide Ext.2 was lodged and the I/C gave him to investigate the case. Accordingly, he investigated the case. Being led by the victim, he inspected the place of occurrence and drew a sketch map vide Ext.3. He recorded the statement of the witnesses and visited the house of the accused. In the meantime, the O/C of Tamulpur police station, registered the Tamulpur PS. Case No.125/17. He brought the victim to the outpost to identify the accused. He sent the victim to record her statement u/s 164 of CrPC. The victim told him that the accused repeatedly asked her over phone not disclose about the incident to anybody. The victim told him that she did not receive any injury in the incident. Thereafter, at the end of the investigation, the charge-sheet vide Ext.4 was filed against the accused.
 - 16. In the cross-examination, the I/O stated further that he did not recover the phone from the accused by which the alleged threatening was made to the victim. He did not examine Sona and Kanchan and members of the Gorkha Student Union as witnesses of the case. He also, did not investigate against Karan Subba. He did not send the victim for medical examination to determine her age. The victim did not submit her birth certificate to him. The I/O controverted the evidence of PW1 that PW1 did not state to him earlier that if she did not allow physical relation, the accused will publish a defamatory message against her in the village and she went to the house of the accused with members of Gorkha Student Union and her date of birth was 22.8.2000. Further, the I/O disclosed that PW2 did not state him earlier that the victim was born in 2001.
 - 17. After going through the evidence of the prosecution witnesses, it appears that the occurrence took place at night at near a local school. It is not denied that the victim and the accused were known to each other prior to the occurrence since both of them belonged to same village. There is only one eye witness of the occurrence which the victim girl. It appears from the evidence of PW2, 3, 4 and 5 that they are hearsay witnesses of the occurrence. Hence, the prosecution case rests heavily on the evidence of PW1.

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18. There is no legal bar to place reliance on a sole victim witness if her evidence is found to be wholly reliable. The **Section 134 of the Evidence Act** does not specify any particular number of witness to prove a fact. *The* **Section 134 of Evidence Act** *envisages that no particular number of witnesses shall in any case be prequired for proof of any fact.* So one witness is sufficient to proof of a fact.

19. In AIR 1962 SC 424 Ramrathan vs. State of Rejasthan relying on Vadivelu Thewar vs. State of Madras, reported in AIR 1957 SC 614, the Hon'ble Supreme Court reiterated the principle that as a general rule the court may act on the testimony of a single witness, though uncorroborated unless circumstances of a particular case where the nature of testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon and that the question whether corroboration of the testimony of a single witness was or was not necessary, must depend upon facts and circumstances of each case.

- 20. In AIR 1976 SC 560 Badri vs State of Rajasthan, it was held that there is no hard and fast rule and in each case the court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting the person.
- 21. Therefore, in the light of above law laid down for examining the evidence of a single witness, the evidence of PW1 is important to scan for sake of the prosecution case. The evidence of PW1 discloses that the accused pulled her hand forcefully towards paddy field with the intention to satisfy his ill-motive. Her evidence shows that she raised protest against such act of the accused. The accused threatened her that if she did not allow him to commit physical relation, the accused will publish her defamatory message against her in the village. But from the evidence of I/O, it appears that PW1 did not state it to her earlier statement u/s 161 of CrPC. This is a serious aspect of the incident which was omitted by PW1 previously. Hence, it can be treated as contradiction of the evidence of PW1 with her previous statement and it significantly erodes credibility to rely her version.

There is a challenge of the defense side that the victim PW1 is a major girl. While PW1 stated that her date of birth was 22.8.2000, PW2 her father, disclosed that the victim was born in the year 2001. PW5 in her cross-examination, stated that the victim was reading on her same class and the victim failed once to

Judge Spl. Court Baksa, Mushahput22. clear her HSLC examination thus, the victim at present, is 21 years of age. The victim in her cross-examination, admitted that she was presently, working as yoga teacher in a local institute for the last one year. It is correct to say that PW2 could not produce any documentary evidence to prove the age of the victim. The I/O also, did not determine the age of the victim by medical test in absence of her birth certificate or other documents. Be that as it may, the father is the right person to speak of proper age of the victim. Hence, in absence of any documentary evidence, the age disclosed by PW2 is accepted. Therefore, it is found that PW1 was born in 2001 and she was a minor and below 18 years of age at the time of occurrence within the meaning of child u/s 2(d) of POCSO act.

- Further, the evidence of PW1 shows that she somehow dashed the 23. accused and fled towards her home. This means that her house was very near to the place of occurrence. Surprisingly, nobody heard anything of the incident on the fateful night neither PW1 reported the incident to her parents or any of her family members. PW2 stated that after 03/4 days, he heard the incident from PW1. It appears that PW1 reported the incident to Sona Sarma, Kanchan Acharjya and Bina Sarma. The I/O admittedly did not examine Sona Sarma and Kanchan Acharjya and even Bina Sarma. Hence, it is serious lapse on the part of I/O. At least, such three girl could have narrated if PW1 reported the incident to them immediately to test her veracity. The evidence of PW3, 4 and 5 heard about the incident much later on. Apparently, PW1 concealed the incident from other including PW2 for more than two days. The reason was not mentioned her. But PW2 stated that he called for local settlement of the matter by village committee but they did not do anything. However, it was duty of PW1 to report the incident to PW2 immediately to proper action against the accused. The threatening part of the accused to PW1 is found not reliable due to her contradictory version. Thus, it appears that concealing the incident for more than two days by PW1, renders her evidence doubtful on her reliability.
- 24. Coming to the evidence of PW1 on the presence of Karan Subba at the place of occurrence, it appears that the accused also, disclosed in his statement recorded **u/s 313 of CrPC** that Karan Subba was present with PW1 at the relevant time. But the I/O did not examine him which is serious lapse of the prosecution. The evidence of PW1 discloses that she admitted that she was returned home with Karan Subba with his two sisters. But two sisters separated from PW1 and Karan before reaching the local school. According to PW1, the accused was found near the school. At the time of reaching near the local school, Karan Subba received

Judge Spl. Court Baksa, Mushalpur urgent phone call to leave from PW1 and hence, he requested the accused to drop PW1 at her home. Apparently the school and place of occurrence was not at far away from the home of PW1. Thus, the accused after receiving PW1 from Karan Subba to escort her to home, it would not take much time to reach her home. It is not the evidence of PW1 that the accused took her to a long distance over paddy filed by pulling her forcefully. Karan Subba also, did not perhaps went far away from PW1. Thus, the home of PW1 and Karna Subba was within the range of hearing yells of PW1. At that moment, according to PW1, the incident occurred. Hence, option was opened for PW1 either to seek help from her family members or from Karan Subba who PW1 stated to be her brother. It is surprise behaviour of Karan Subba to leave PW1 at the hand of the accused at the night hours when PW1 was alone with him. Therefore, the evidence of PW1 to corroborate her version is felt essential to clarify the above doubts. Withholding the evidence of Karan Subba apparently renders the evidence of PW1 under doubt if PW1 tells the truth about the incident. Moreover, the evidence of I/O it appears that the victim did not receive any injury to her person in the incident. If there was use of force by the accused against PW1, she ought to have received bruises on her hands. But absence of any injury makes the incident more doubtful. Hence, in the light of statement of the accused made **u/s 313 of CrPC** that it is highly probable that PW1 and Karan Subba might have come to school premises to meet alone for their own purpose which was seen by the accused accidentally. Finding no alternative, PW1 blames the accused to save her own image in the village.

Apart from above, the evidence of PW1 is confined her allegation 25. against the accused to touching of her hand only however, she alleged of the illmotive of the accused to have physical relation with her with threatening. The section 7 of POCSO Act defines the sexual assault upon a child which is punishable u/s 8 of said Act. It is provided u/s 7 of the said Act that whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child to touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Judge Spi. would have raised alarm to save herself since her house was very near to the place of occurrence. But PW1 did not decrease. If the accused had sexual intent while touching the hand of PW1, she parents for more than 2 days. Apparently, PW1 did not treat the occurrence as serious for which she remained mum for two more days to disclose it to others. In

addition, PW1 also, did not state the same to the I/O earlier. In the statement recorded $\mathbf{u/s}$ 313 CrPC the accused stated that when he reached near to sound of gossiping of human being at the local premises at the fateful night, Karan immediately ran away therefrom and he sent PW1 to home. Since the evidence of Karan was withheld by the prosecution, it is probable that the version of the accused might be true. Under such circumstances, the evidence of PW1 cannot be relied upon to hold that the accused had touched her hand with sexual intent within the meaning of section 7 of POCSO Act.

Besides above, it appears that occurrence place on 14.5.17 and the 27. FIR was lodged on 26.5.17 which is after more than 10 days of the incident. PW1 failed to place any reasonable ground for delaying to disclose the incident to others including PW2. It is admitted fact that PW2 received of information only after 3 /4 days. It is in criminal jurisprudence expected that the information of a commission of a crime be reported to the police at the earliest possible time to take immediate action by the law and to avoid any colourful exercise of mind by the informant as to the occurrence. But the delay may happen which is normal for various reason. If the reason is satisfactory, such delay would not affect the prosecution case. In this case in hand, it appears that the biggest lacuna is that the victim kept the incident undisclosed for long time which causes the delay in filing the FIR by PW2. The evidence of PW2 itself shows that he did not want to file the FIR against the accused as he was a local boy. But the wife of PW2 and the victim reported the matter to the local Gorkha student union who arranged a negotiation between the victim and the accused. But a quarrel between the parties leads to filing of the case before the police. All these factors or circumstances does not satisfactorily reflect the reasonable explanation of delay in lodging the FIR. There must be more to satisfy the delay. Hence, delay in the filing the FIR erodes the credibility of the prosecution case to rely upon. Delay renders doubt over the prosecution story as well as reliability of the version of PW1. Under such circumstances, the accused is entitled to get the benefit of doubt. Accordingly, the accused is given the benefit of doubt.

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In the above facts and circumstances of the case, it is found that the prosecution has failed prove its case against the accused beyond all reasonable Judge Shing doubt. Accordingly, the accused is held not guilty u/s 8 of POCSO Act and he is acquitted and set at liberty. His bail bond is however, remained in force for another 6 months from the order **u/s 437-A CrPC**. The victim girl is entitled to get compensation of Rs.2lakhs under Assam Victim Compensation Scheme. Accordingly,

this court recommends for payment such monetary compensation to the victim girl by the DLSA, Baksa, Mushalpur. Forward a copy of judgment of the District Magistrate, Baksa, Mushalpur as required **u/s 365 of CrPC**.

2019.

Given under the hand and seal of this court on this 1^{st} day of March

Dictated and corrected by:

C. Das, Judge Spl. Court Judge Special Court Baksa, Mushalpur Baksa, Mushalpur

Juriedge Spil Count Balksa Miliahalipur

Typed by :

P. Deka, Com. Typist

ANNEXURE:

List of prosecution witness:



PW1 ... the victim girl

PW2 ... Sri Gopinath Khandal ... complainant

PW3 ... Smti. Lokmaya Karaki

PW4 ... Smti. Sangita Sarma

PW5 ... Smti. Bina Sapkata

PW6 ... Sri Mahendra Prasad Ray ... I/o

List of defense witness:

Nil

List of documents exhibited:

Ext.1 ... statement of the victim u/s 164 crpc

Ext.2 ... FIR with relevant GDE

Ext.3 ... sketch map

Ext.4 ... charge-sheet

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