## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 03 OF 2017

(Under Section 8 of the POCSO Act, arising out of G.R. Case No. 2805 of

2016)

Present :- Sri Ashok Kumar Borah, AJS

**Special Judge, Sonitpur** 

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Md. Tahid Ali Anchari

Son of Late mahammad Ansari,

Resident of Nepalipatty Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge :- 03-05-2017

Date of Recording Evidence :- 06-07-2017 Date of examination of accused u/s :- 06-07-2017

313 Cr.P.C

Date of Argument :- 06-07-2017

Date of Judgment :- 06-07-2017

Counsel for the Prosecution :- Mrs. Jaya Baruah,

Addl. Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. Biraj Nath, Advocates.

## **JUDGMENT**

- In this case accused Md. Tahid Ali Anchari is put for trial for allegation of charge under Section 8 of the POCSO Act, 2012.
- 2. The factual matrix according to the FIR, in brief, is that on 28-08-2016 one aged person Tahid Ali after coming rape on a minor daughter of Dharani Borah, fled away from their house. On hearing hue and cry, the informant and other local people gathered in the house of said Dharani Bora, took the victim girl and her father to the police station. Hence, this prosecution case. The

ejahar was filed by informant Sri Binay Gopal Saha before the O/C of Tezpur Police station on 29-08-2016.

- 3. On receipt of the ejahar, O/C of Tezpur Police station registered a case being Tezpur P.S. Case No. 150/16 u/s 376 of IPC read with section 4 of the POCSO Act. After completion of usual investigation, the I.O. sent up the accused for trial by filing charge sheet u/s 8 of the POCSO Act, 2012 against the accused Md. Tahid Ali Anchari.
- **4.** On being appeared the accused before this Court, after hearing both parties, framed charge under section 8 of POCSO Act, 2012 against the accused and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- To substantiate the case prosecution examined as many as three 5. numbers of witnesses which includes the victim and mother of the victim. After completion of third witness, learned counsel for the accused submitted that the statement of the victim and her mother no way supported the prosecution case. Hence, praying for closing the evidence. Even if examined the other witnesses with the evidence of the victim prosecution case would not develop. Learned Addl. Public Prosecutor also conceded. I have thoroughly, perused the statement of the victim and also mother of the victim. It also appears that none of the statement of the witnesses reveals any materials against the accused as to the alleged offence. Therefore, I think that it would be futile to examine the other witnesses. Even if examined the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused persons. Considering these aspects, prosecution evidence is closed. Speedy trial is the fundamental right of the accused person. Accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegations and declined to adduce defence evidence.
- **6.** I have heard the argument put forward by the learned counsels of both sides.

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- **7.** The point for decision in this case is that -
  - (1) "Whether on or 28-08-2016, at Garowanppatty Hola, under Tezpur Police station the accused committed sexual assault on "Miss X (aged about 13 years) and thereby committed an offence punishable under section 8 of the Protection of Child from Sexual Offences Act?

## Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **9.** PW 1 Dr. Tutumoni Handique, stated that on 30-08-2016 she was posted as working as Sr. Medical & Health Officer-1 in the Kanaklata Civil Hospital, Tezpur and on that day at about 1.40 p.m. in the labour room complex of KCH, she examined Seema Borah, 13 years, female, D/O Dharani Borah, Bamun gaon Barika chuburi Tezpur, on police requisition, in reference to Tezpur PS Case NO. 1501/16 u/s 376 of the IPC r/w section 8 of POCSO Act on being escorted and identified by ABC/ 838 Kalpana Boro , vide Hospital registration No. 114764/2016 dt. 30-08-2016. She was examined in presence of GNM Benedicta Longa. Consent in writing before examination was taken from her mother.

According to victim, she was asked to expose her private parts in front of known person. Menstrual history- attains manerchy two months back.

On examination she found the following:

Height – 138 cm., Weight – 37 Kg, Teeth – 6 in all four quadrants.

Identification mark – mole on forehead

Neat and tidy. Average built, normal gait.

Secondary sexual characters are developing stage. No injury in her private parts as well as on her other parts.

#### **Investigation report.**

Vaginal smear for spermatozoa – Negative for spermatozoa.

Done at KCH, Tezpur, Lab No. 99/16

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X-ray for age determination – not done.

#### **OPINION:**

- 1. Actual age could not be ascertained as X-ray for ossification test not done.
- 2. No injury marks on her body as well as on her private parts.
- 2. No sign of recent sexual intercourse.

Enclo: - Vaginal smear report and police requistion.

Ext. 1 is the Medical Report and Ext. 1(1) is her signature. Ext.2 is the police requisition and Ext. 2(1) is her signature on receipt of police requisition.

In cross-examination, she admitted that she has not submitted the written consent with the medical report. She has not mentioned in the report about the duration of examination. She has not mentioned in the report about the mental condition of the victim.

10. PW 2 Smt. Mina Borah, mother of the victim girl stated that she knows the accused. On the day of incident she went to her work place. At about 7.50 p.m. while she arrived at her home, she came to know that accused in the day time came to their house. During that time her victim daughter was sleeping, accused addressed by calling her name. So her daughter out of shock woke up and raised alarm. On hearing her alarm neighbouring people on suspect informed the matter to police. One Binay Gopal Saha has also filed the ejahar. She was reported by her daughter. Police recorded her statement along with the statement of the victim. At the time of the incident, the victim was 14/15 years of age.

**In cross-**examination, she admitted that she was not reported by her daughter that accused had committed any misdeed to her. On that day, people gathered there and assaulted the accused. Her daughter was forced by local public to give statement.

**11.** PW 3, the victim Miss X stated before the court that he knows the accused. His name is Sahid @ Tahid. He has a house near the shop of her

mother at Kekorapool. The incident took place on year ago. At the relevant time her mother went to do her work. She was alone at home and she was sleeping at that time. Accused came and called her mother addressing her mother's name. Out of fear she raised alarm, therefore, the neighbour of their house, filed a false case against the accused. Accused did not commit any misdeed to her. The landlord of their house filed the case against the accused. She was examined by a doctor at Civil Hospital and she made statement before the Magistrate. At the dictation of woman constable and her neighbour, she made statement before the learned Magistrate.

- 12. These much is the evidence of the prosecution case. While the accuse was examined u/s 313 Cr.P.C. he denied the allegation.
- **13**. Learned counsel for the accused submitted that the prosecution has failed to prove the charge against the accused beyond any reasonable doubt.
- 14. Here in the present case, firstly, the victim gives goodbye to the prosecution case stating at the relevant time accused who is known to her came to their house as earlier raised the name of her mother. During that time, she was in sleep. Out of fear she raised alarm. On hearing her alarm, neighbouring people including their owner of their house arrived there. She clearly stated that accused did not commit any misdeed on her. Besides, accused is an innocent person. Similarly, mother of the victim stated on oath that in the evening of 7.50 p.m. while she came back to her house, she came to know that accused as earlier came to their house raising her name, during that time her daughter was in sleep. On hearing the shouting of the accused, her daughter got up from the bed and out of fear she started to shout. On hearing her shouting, neighbouring people including the landlord of their house is arrived there. They informed the matter to the police station. Thereafter, they filed the case against the accused. By that way, the mother of the victim did not implicate the accused in any of the alleged charge.

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**15.** To brought the charge under section 8 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

#### Section 7 - sexual assault-

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child 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 issaid to commit sexual assault"

- **16.** Here in the present case, as stated above, neither the victim nor the mother of the victim no way supported the prosecution case.
- **17.** Therefore, I am bound to hold that the prosecution has failed to prove the alleged charge against the accused beyond any reasonable doubt. Hence, the accused Md. Tahid Ali Anchari is acquitted on benefit of doubt and set him at liberty forthwith.
- **18.** The liabilities of the bailor is hereby discharged.

The GR Case No. 2805/16 be returned to the learned committal court with a copy of this order.

Given under my Hand and Seal of this Court on this the  $6^{\text{th}}$  day of July, 2017.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

# **APPENDIX**

# **Prosecution Witness**

Prosecution Witness No.1 Dr. Tutumoni Handique. 1. :-

2. Prosecution Witness No.2 Smt. Mina Borah

3. Prosecution Witness No.3 Victim.

# **EXHIBITS.**

Exhibit 1 Medical Report

Exhibit 2 police requisition

> (Ashok Kumar Borah) **SPECIAL JUDGE**

**SONITPUR: TEZPUR** 

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