CAUSE TITLE POCSO Case No. 47/15

Informant: 'Y'.

Accused: Sri Pranjal Bhuyan,

S/o- Late Indreswar Bhuyan,

R/o- Cherpajan Gaon,

PS- Joypur,

District- Dibrugarh.

ADVOCATES:-

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

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Mr. Uttam Rawat, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 47/15 G.R. Case No. 1405/15

> > State of Assam

-Vs-

Sri Pranjal Bhuyan

Charges: Under Sections 6, read with Section 5(I) POCSO Act.

Date of evidence on : 02-02-16, 02-03-16, 12-07-16, 08-08-16, 17-08-16,

02-11-16 & 19-06-19.

Date of argument : 17-07-19. Date of Judgment : 30-08-19.

JUDGMENT

- The prosecution case in a narrow compass is that in the month of July, 2014, Smt. Pranita Bhuyan took the 15 year old victim 'X' along with her to work for her as domestic help. While the victim was with Pranita Bhuyan, her husband Sri Pranjal Bhuyan (hereinafter the accused) exercised threats and committed penetrative sexual assault on the minor victim 'X' on several occasions. As the victim was terrified, she did not disclose about the incident of sexual assault. In the end of January, 2015, the accused person's mother-in-law brought back the victim to her house. The victim's body started showing tell tale signs and when she was confronted, she informed that the accused impregnated her. An ejahar regarding this incident was lodged by the victim's father 'Y' which was registered as Joypur PS Case No. 43/15 under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).
- 2) The investigating officer (IO in short) SI Sanjib Kumar Roy who was entrusted with the investigation, commenced investigation. He went to the

place of occurrence, prepared the Sketch-Map and recorded the statements of the witnesses. He forwarded the victim to the Magistrate who recorded her statement under Section 164 of the Code of Criminal Procedure (CrPC for short). On completion of investigation, the IO laid Charge-Sheet against the accused under Section 3 POCSO Act.

- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Sections 6, read with Section 5(I) POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of six witnesses including the medical officer (MO in short) and the IO and exhibited several documents, whereas the accused did not tender any evidence, but cross-examined he witnesses to refute the charges.

Submissions:

5) The learned Public Prosecutor Smt. Runumi Devi and the learned Additional Public Prosecutor Mrs. Sahnaz Akhtar laid stress in their arguments that this is an open and shut case and the accused deserve stringent punishment. The accused took the advantage of his formidable position and exploited the victim. The learned defence counsel Mr. Uttam Rawat laid stress in his argument that the victim's pregnancy was detected by the MO on 31-05-15 and she was carrying for 22 weeks and 6 days. This implies that the victim was carrying for five months on 31-05-15. It is contended that the FIR was lodged on 30-05-15. According to the FIR, the victim returned home in the end of January, 2015 along with the accused person's mother-in-law. As soon as the victim's appearance became noticeable, she was confronted and she revealed that the accused impregnated her. Apart from the FIR, according to

the victim's testimony, she requested her sister to send her to her house and she boarded a bus and went to her aunt's house at Namrup and she stayed there for one month. The learned defence counsel further emphasized through his argument that the victim returned to her house in the month of March, 2015, because the victim testified in her cross-examination that she returned home a week before Shivratri of 2015 with Pranita Bhuyan's mother. She also testified in her cross-examination that she left the accused person's house, i.e., after Diwali of 2014. So stating, the learned defence counsel submitted that the victim was examined on 31-05-15 and her pregnancy was detected to be of 22 weeks 6 days. Thus, the accused cannot be held responsible, because the victim was already out of the accused person's custody, because she left his house after Diwali, 2014. The remaining part of the argument will be discussed at the appropriate stage.

Point for determination:

- 6) On the backdrop of the rival contentions proponed at the bar, the following point is apposite for proper adjudication of this case:
 - i. Whether during her stay in the accused person's house, from July, 2014 upto January, 2015, the accused committed penetrative sexual assault on the victim 'X'?

Decision thereon and the reasons for the decision:

- 7) To decide this case in its proper perspective, it is necessary to delve into the evidence.
- 8) The victim 'X' testified as PW-1 that the accused is her elder brother-in-law (Bhindeo). He married Smt. Pranita Bhuyan who is her paternal uncle's daughter. The accused resides at Naharkatia Serpajan Gaon. A year before the incident, her cousin Pranita Bhuyan took her to her house to help her

with the household chores and cultivation, as she was pregnant at that time. She stayed in the accused person's house till harvest season. During her stay in the accused person's house as domestic help, one day, the accused caught her by her hands and when she confronted as to why he had held her hands, the accused stabbed her with a knife on the upper part of her thigh as a result of which, blood oozed out from the injury (this injury was displayed by the victim by removing her pant).

- 9) The victim (PW-1) further testified that during her stay in the accused person's house, she used to sleep in a room attached to the verandah of the accused person's house which was situated at a little distance away from the room where the accused person's wife Pranita Bhuyan used to stay. One night, while she was sleeping in the room alone, the accused came and awoke her and removed her clothes and forcefully committed sexual intercourse with her. At that time, she experienced pain in her private parts. Thereafter, on several occasions, the accused forcefully committed sexual intercourse with her. She did not inform her sister Pranita Bhuyan about the incident, because the accused stabbed her with a knife on her upper thigh on an earlier occasion.
- 10) The evidence of PW-1 further proceeds that when her sister Pranita Bhuyan confronted her about missing her monthly periods, she did not disclose about the sexual assault. Thereafter, her sister collected her urine and after examination, her sister administered some tablets after her meal which put her to sleep. She did not know what those tablets were for, but after consuming the tablets, she started having her monthly periods for one month and thereafter, her periods stopped again and her sister forbade her from disclosing about this incident to any other person and her sister Pranita

provided her with tablets. After a few days, she requested her sister Pranita to send her to her house. Then her elder sister sent her back on a bus, but she went to Namrup to her elder sister's maternal home where she stayed for one month. Thereafter, she wanted to return to her own house and then her aunt, i.e., her elder sister Pranita's mother brought her back to her house. She did not inform about the mishap to her family members. One day, her mother noticed her bulging belly and confronted her and then she informed her mother that the accused committed forceful sexual intercourse with her at night in the house. Then her mother took her to the Government hospital situated near their village and the doctor informed her mother that she was pregnant. Thereafter, her mother confronted the accused about the incident, but the accused denied. Accordingly, her mother informed her father and her father lodged an ejahar with the police. Her father also asked her about the incident and she narrated the incident to her father. She went to the police station and her statement was recorded. The police also brought her to the hospital for medical examination. The police brought her to the Court and the Magistrate recorded her statement Ext. 1 wherein Ext. 1(1) upto Ext. 1(3) are her signatures. About four months back (from 02-02-16), she was blessed with a girl and the accused is the father of her daughter.

11) The learned defence counsel laid stress in his argument that the victim's pregnancy was detected by the MO on 31-05-15 and she was carrying for 22 weeks 6 days. This implies that the victim was carrying for five months on 31-05-15. The MO Dr. Nibedita Shyam testified as PW-5 that on 31-05-15, she was serving as GDMO in the Department of Forensic Medicine when she examined the victim 'X' in connection with this case and found the following:

On genital examination: Vulva is healthy. Labia minora exposed on

abduction of thighs. Hymen: Old tear at 2, 6 and 11'O clock position. Vagina is healthy. Cervix and OS closed. Uterus: Enlarged with fundal height at around 24 weeks. Linea nigra present. Foetal parts and movement palpable. Foetal heart rate is 140 BPM. Vaginal smears not taken.

- 12) On the basis of physical examination, radiological and laboratory investigations done on the victim 'X', the MO was of the opinion that:
 - i. Her age is above 14 years and below 16 years;
 - ii. Evidence of pregnancy detected on her person and duration of pregnancy as per ultrasonography report is 22 weeks 6 days;
 - iii. Evidence of recent injury not detected on her body.

Ext. 2 is the Medico-legal Report and Ext. 2(1) is the signature of the MO.

13) I have carefully scrutinized the evidence. The FIR was lodged on 30-05-15. According to the FIR, the victim returned home in the end of January, 2015 along with the accused person's mother-in-law. As soon as the victim's appearance became noticeable, she was confronted and she revealed that the accused impregnated her. Apart from the FIR, according to the victim's testimony, she requested her sister to send her to her house and she boarded a bus and went to her aunt's house at Namrup and she stayed there for one month. Much capital was made by the accused on this point. The learned defence counsel emphasized through his argument that she returned to her house in the month of March, 2015, because the victim testified in her cross-examination that she returned home a week before Shivratri of 2015 along with Pranita Bhuyan's mother. She also testified in her cross-examination that she left the accused person's house after Diwali of 2014. So stating, the

learned defence counsel submitted that the victim was examined on 31-05-15 and her pregnancy was detected to be of 22 weeks 6 days. The accused cannot be held to be responsible, because the victim was already out of the accused person's custody, because she left his house after Diwali of 2014. Usually, Diwali falls in the month of November or later part of October. If the victim's gestation period is counted from Diwali, the victim would have been carrying for 7 months. In this manner, the accused cannot be held guilty of having sired the victim's daughter. She has admitted in her cross-examination that she did not meet the accused after Diwali.

- 14) The victim's entire testimony renders the prosecution case redundant and nugatory. Her evidence does not inspire confidence. The MO's evidence reveals that the victim was carrying for 22 weeks and the testimony of the victim reveals that she did not meet the accused for more than six months. According to the argument of the learned defence counsel, Diwali of 2014 was on 23-10-14, which implies that the victim did not meet the accused for seven months. PW-1 also admitted in her cross-examination that her aunt's, i.e., Parinita's mother's grandson Sri Jigyajyoti Hazarika informed her aunt that she was indulging in immoral activities with a person named Dhun Saikia, because at that time, the light of the room was switched off and she was filling water inside the room at that time. She informed Parinita's mother that it was a false allegation and she insisted to return to her home, because she was upset by the information given to her aunt by the little boy, i.e., her aunt's grandson.
- 15) PW-1 further testified in her cross-examination that she could not specifically mention the month when she conceived. She did not inform anybody about the pregnancy, because she was not aware that she was pregnant at that

- time. She admitted that she was suffering from 'white discharge' and so her mother had taken her to the doctor.
- 16) The MO's opinion also depicts that the victim was above 14 years and below 16 years of age.
- 17) It is pertinent to mention at this juncture that the testimony of the vitim is consistent to her statement under Section 164 CrPC. Although no contradiction could be elicited through her cross-examination, yet, the testimony of the victim does not inspire confidence. The statement of the victim and her testimony clearly depicts that she had frequent sexual relationship with the accused and it is apparent that she protested only once when she has alleged that the accused pierced a knife on her upper thigh. This injury was also shown to the Magistrate and to this Court. No opinion was given by the Magistrate and by this Court regarding the nature of the injury. The MO did not detect any injury on the victim's thigh. It is surprising why the victim did not mention about her injury to the MO. It appears that the victim may have had consensual sexual relationship with the accused. She concealed about the entire incident and when she was caught unawares, a case was slammed against the accused who was caught unawares.
- 18) The victim's father 'Y' testified as PW-2 that the accused married his niece, i.e. his elder brother's daughter Smt. Pranita Bhuyan. His daughter is 15 years of age. A year before the incident, Pranita Bhuyan came to their house and requested to take his daughter to help her with her domestic work, as Pranita was pregnant at that time. His daughter 'X' stayed in Pranita's house for about 8-9 months. One day, Pranita's mother who resides in Namrup came and dropped his daughter in his house. After 2/3 days, he learnt from his daughter that his daughter was missing her menstrual periods, because

she was impregnated by the accused. Then he called the accused person's mother over phone and asked her to come to his house which she denied. Then he lodged this case against the accused. The police recorded his statement and his daughter's statement. Four months prior to 02-02-16, his daughter was blessed with a girl who is presently residing in their house. A police personnel wrote the ejahar, on which he affixed his thumb impression.

- 19) It is clear from his cross-examination that when he learnt about this incident, he did not have any discussion with the accused person.
- 20) In sync with the evidence of PW-2, the victim's mother 'Z' testified as PW-3 that about two years ago, the accused took his daughter to his house to help his wife with her domestic help, as his wife was pregnant at that time. Her daughter stayed in the accused person's house for about one year and thereafter, she returned home. When her daughter returned home, she noticed that the lower part of her abdomen was protruding and she confronted her daughter about her protruding belly. Her daughter replied that she was missing her periods and she also informed her that while she was staying in the accused person's house, the accused forcefully committed sexual intercourse with her by threatening her with her life. At that time, her daughter was unaware how a woman conceives. She took her daughter to Rahmaria Hospital and the doctor informed her that her daughter was carrying for three months. After returning home, she informed her husband about the incident and her husband informed his elder sister who called the accused over phone and confronted him about the incident, but the accused denied his involvement and they were left to fend for themselves. Thereafter, her husband lodged the ejahar with the police. She and her daughter accompanied her husband to the police station at the time of lodgment of the

ejahar. The police recorded their statements and took her daughter to the hospital for examination. She also accompanied her daughter to the Court and the Magistrate recorded her daughter's statement. At present, her daughter is staying with them along with her baby girl who is five months old. Her daughter has informed her that the accused forcefully impregnated her by committing forceful sexual intercourse while she was staying in the accused person's house. PW-3 has testified in her cross-examination that she did not know that while 'X' was staying in Parinita's parental home, she was caught red handed inside a room with one boy named Dhun and the door was latched from inside and Parinita's mother-in-law rebuked her daughter 'X' and assaulted her and sent her back to her house. She also stated in her cross-examination that she did not know if the accused assaulted her daughter, because one night her daughter went out of the accused person's house.

- 21) The cross-examination of PWs-1 and 3 impeaches the credit of the witnesses. It can be deciphered through their cross-examination that the victim was confronted with some incidents of immoral acts with another boy named Dhun Hazarika. This has been admitted by the victim in her cross-examination while the victim's mother preferred to remain clueless about any such incident. The victim's mother did not deny any incident between the victim and Dhun. However, the victim has denied that she was misunderstood by Parinita's mother, because although she was in the room with Dhun Hazarika with the lights switched off, she (PW-1) did not indulge in immoral activities, but she was filling water.
- 22) I have already held in my foregoing discussions, that the victim's evidence does not inspire confidence. I would like to reiterate that the evidence of

- PWs-1 and 2 also does not inspire confidence. The evidence, on the contrary, impeaches their credit.
- 23) Smt. Moni Chetia testified as PW-4 that the victim 'X' is her niece. In the Assamese month of Bohag, in the year 2015, she went to the victim's house. The victim's father is her elder brother. The victim told her that while she was staying in the accused person's house, the accused forcefully had physical relationship with her. She noticed the physical change on the victim's body and she learnt that the accused impregnated the victim 'X'. She accompanied the victim's mother while they took her to the doctor and after examination, they were informed that the victim was pregnant. Later, she learnt that her elder brother lodged an ejahar with the police regarding the pregnancy of his daughter. The accused is the father of the victim's new born baby. The evidence of this witness clearly reveals that she heard about the incident from the victim and her parents.
- 24) Sri Sanjay Kumar Roy is the IO and he testified as PW-6 that on 03-05-15, he was posted at Joypur Police Station as Second Officer. On that day, the OC endorsed him to investigate the Joypur PS Case No. 43/15 under Section 3 POCSO Act which was initiated by an FIR lodged by Sri 'Y'. Ext. 3 is the FIR and Ext. 3(1) is the signature of SI Pradip Kumar Bora, with which he is acquainted. Ext. 4 is the printed Proforma of the FIR and Ext. 4(1) is the signature of Pradip Kumar Bora. He met the informant and the victim at the police station and recorded their statements and forwarded the victim for medical examination. On 01-06-15, he forwarded the victim to the Magistrate for recording her statement under Section 164 CrPC. On the next day, he went to the victim's house at Serepajan, Joypur and recorded the statements of the witnesses and thereafter, he went to the accused person's house and

he brought the accused to the police station for interrogation and forwarded him to the judicial custody. He collected the Medico-legal Report of the victim from Assam Medical College & Hospital at Dibrugarh. He made a prayer before the Surgeon for DNA profiling from Assam Medical College & Hospital at Dibrugarh and he was informed that the DNA profiling cannot be done at Assam Medical College & Hospital at Dibrugarh. On finding sufficient materials, he submitted Charge-Sheet against the accused person. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature.

- 25) In his cross-examination, he testified that the exact date of the occurrence is not mentioned in the FIR. He admitted that he did not go to Namrup during investigation. He also admitted that he did not investigate regarding the period when the victim stayed in the alleged place of occurrence. He has not recorded the statements of the witnesses at Joypur and so on and so forth.
- 26) It has already been held in my foregoing discussions that the victim's evidence does not inspire confidence. The DNA profiling was necessary to nail the perpetrator of the crime. The contradictions regarding the gestation period extends a benefit of doubt to the accused person, despite the fact that the victim gave birth to a girl.
- 27) I would like to refer to the decision of Hon'ble High Court of the Judicature at Kolkata in *Subrata Biswas vs State* (CRA No. 011 of 2018) decided on 11-06-19, wherein it was observed that:

"The statutory presumption applies when a person is prosecuted for committing offence under Sections 5 and 9 of the Act and a reverse burden is imposed on the accused to prove the contrary. The word 'is prosecuted' in the aforesaid provision does not mean that the prosecution

has no role to play in establishing and/or probablising primary facts constituting the offence. If that were so then the prosecution would be absolved of the responsibility of leading any evidence whatsoever and the Court would be required to call upon the accused to disprove a case without the prosecution laying the firm contours thereof by leading reliable and admissible evidence. Such an interpretation not only leads to absurdity, but renders the aforesaid provision constitutionally suspect. A proper interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the Act (as in the present case) the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt. On the contrary, it is only required to lead evidence to the ingredients of the offence on establish preponderance of probability. Upon laying the foundation of its case by leading cogent and reliable evidence (which does not fall foul of patent absurdities or inherent probabilities) the onus shifts upon the accused to prove the contrary. Judging the evidence in the presence case from that perspective, I am constrained to hold that the version of the victim (PW-1) and her mother (PW-2) with regard to twin incidents of 24th March, 2016 and 18th April, 2016 if taken as whole, do not inspire confidence and runs contrary to normal human conduct in the backdrop of the broad probabilities of the present case.

Hence, I am of the opinion that he evidence led by the prosecution to establish the primary facts suffer from inherent contradictions and patent improbabilities particularly the inexplicable conduct of the victim herself. One part of the prosecution case improbabilises the other part to such an extent that no man of reasonable prudence would accept the version as coming from thee witnesses. Hence I am of the opining that the factual matrix of the case does not call for invocation of the aforesaid statutory presumption so as to convict the appellant on the charges leveled against him."

- 28) Reverting back to this case, it is held that this case is of similar nature and the presumption under Sections 29 and 30 of the Act cannot be invoked to fasten the guilt on the accused.
- 29) Cumulative effect of the prosecution read with the medical evidence and other surrounding circumstances, as highlighted above, when considered with the documents of the legal principle with the background of the legal principle, as stated (Supra), it is clear that the accusation against the accused has not been established beyond doubt and certainly, benefit of doubt is to be given to the accused.
- 30) It is thereby held that the prosecution failed to prove beyond a reasonable doubt that the accused person committed penetrative sexual assault on the victim. Thereby, the accused Sri Pranjal Bhuyan is acquitted from the charges under Sections 6, read with Section 5(I) POCSO Act on benefit of doubt and is set at liberty forthwith.
- 31) The victim does not deserve compensation.

Judgment is signed, sealed and delivered in the open Court on the 30^{th} day of August, 2019.

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

> > Contd.

APPENDIX POCSO Case No. 47/15

List of witnesses for prosecution:

- 1. PW-1 Victim 'X'.
- 2. PW-2 Father of the victim and the informant;
- 3. PW-3 Mother of the victim;
- 4. PW-4 Smt. Moni Chetia;
- 5. PW-5 Dr. Nibedita Shyam;
- 6. PW-6 Sri Sanjay Kumar;
- 7. CW-1 Sri Kokheswar Bora.

List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim 'X', recorded under Section 164 CrPC;
- 2. Ext. 2 Medico-legal Report;
- 3. Ext. 3 Ejahar;
- 4. Ext. 4
- 5. Ext. 5 Charge-Sheet.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil.

List of exhibits for defence: Nil.

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno. Sessions Judge, Dibrugarh