# CAUSE TITLE POCSO Case No. 61/16

Informant: Smt. Bhagya Tanti,

W/o- Sri Lal Tanti,

R/o- Natun Line, Lakribam Tea Estate,

PS- Tingkhong, District- Dibrugarh.

Accused: Sri Suresh Paharia,

S/o- Sri Chutu Paharia,

R/o- Natun Line, Lakribam Tea Estate,

PS- Tingkhong, District- Dibrugarh.

## ADVOCATES:-

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

For the Defence: Sri Uttam Rough, learned Legal Aid Counsel.

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

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 61/16 G.R. Case No. 2539/16

> > State of Assam

-Vs-

Sri Suresh Paharia

Charges: Under Section 6, read with Section 5(I) and j(ii) of POCSO Act,

read with Section 376 IPC.

Date of evidence on : 08-02-17, 15-06-17, 18-07-17, 18-12-17 and 09-08-18.

Date of argument : 31-10-18. Date of Judgment : 14-11-18.

## **JUDGMENT**

- 1) Prosecution case in a narrow compass is that Sri Suresh Paharia (hereinafter the accused) had an illicit relationship with the victim 'X' and impregnated her and she was carrying for three months when this FIR was lodged by her mother Smt. Bhagya Tanti (hereinafter the informant). The FIR was registered as Tingkhong PS Case No. 109/16 under Section 4 of Protection of Children from Sexual Offences Act (POCSO for short) and SI Upen Chandra Bora was endorsed with the investigation.
- 2) The investigating officer (IO for short) embarked upon the 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). The victim was also forwarded for medical examination. On finding prima facie materials, he submitted Charge-Sheet against the accused person under Section 6 of POCSO Act and Section 376 of the Indian Penal

- Code (IPC for short).
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 6 of POCSO Act, read with Section 376 IPC 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 eight witnesses including the medical officer (MO for short) and the IO and exhibited several documents and the accused cross-examined the witnesses to refute the charges.
- 5) On the inculpatory evidence arising against him, the answers of the accused to the questions under Section 313 CrPC depicts a plea of total denial.

#### **SUBMISSIONS:**

6) The learned defence counsel laid stress in his argument that the age of the victim is above 18 years according to Medico-legal Report. It is submitted that after the pregnancy was disclosed, she falsely alleged the accused. The victim concealed for a prolonged time who was her paramour. The statement of the victim under Section 164 CrPC is contradictory to her evidence. The history of the Medico-legal Report depicts that the victim has named Bablu Murah as her paramour. The victim herself appears to be very confused who impregnated her. The DNA test ought to have been done to ascertain the father of the child. The learned Public Prosecutor Mrs. Runumi Devi and learned Addl. Public Prosecutor Mrs. Sahnaz Akhtar emphasized through their arguments that this case has been proved beyond reasonable doubt that the accused has sired the child and he deserves stringent punishment.

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

7) To decide the case in its proper perspective, the following points are apposite

for a just decision of this case:

- i. Whether the accused committed rape on the victim 'X'?
- ii. Whether the accused committed aggravated sexual assault on the victim 'X'?

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

- 8) To properly adjudicate this case, it is necessary to delve into the evidence.
- 9) The informant Smt. Bhagya Tanti testified as PW-1 that the accused is her neighbour and the victim is her daughter. About six months ago, her daughter was not well and suspecting that she was suffering from Jaundice, they took her to the tea garden hospital. After examination, the doctor informed her that her daughter was pregnant and she was carrying for three months. When she confronted her daughter, her daughter was terrified. On repeated querries by the nurse, her daughter confided to the nurse that the accused impregnated her. She was also present when her daughter informed the nurse about the accused person. Her daughter is a minor and her age is 15 years. She arranged for a meeting and the accused was also present. Her daughter stated that the accused impregnated her while the accused denied that he impregnated her daughter. Then the villagers advised her to lodge this case against the accused. The ejahar was written according to her narrative, by a person who resides near Tingkhong Police Station. Her daughter accompanied her to the police station and the police recorded her statement and took her daughter to Assam Medical College & Hospital at Dibrugarh for examination. Her daughter was also forwarded to the Magistrate who recorded her statement. Her daughter was carrying for seven months at the time of her deposition.
- 10) Her cross-examination is not noteworthy.

- of incident, the accused called her to the house of Jukalbarik. Only an old lady resides in the house. When she went to Jukalbarik's house, the accused undressed her and forcefully committed rape on her. When she resisted, the accused threatened her with dire consequences. As she was terrified by his threats, she did not inform her parents about the incident. When she missed her menstrual period, she was feeling unwell and her mother took her to the hospital. Her pregnancy was detected in the hospital. When her pregnancy was detected, she disclosed before the Borbabu and the nurse that the accused impregnated her. She also informed her mother, and the members present in the meeting, that the accused committed rape on her forcefully. Her mother lodged this case and she accompanied her mother to the police station. She gave her statement to the police. She was also taken to Assam Medical College & Hospital at Dibrugarh for medical examination and forwarded to the Magistrate who recorded her statement.
- 12) The demeanour of the victim was recorded and the victim appears to be both physically and mentally retarded. The statement of the victim under Section 164 CrPC was not exhibited. The prosecution failed to produce the Magistrate as a witness. This is a major lapse on the prosecution side.
- 13) The learned defence counsel laid stress in his argument that the statement of the victim under Section 164 CrPC reveals that the incident occurred in the victim's house in the absence of her parents. She informed her parents and her family members on the same day despite the fact that the accused threatened her to kill her if she disclosed about the incident. This statement is contradictory to her testimony in the Court. When the prosecution failed to exhibit the statement under Section 164 CrPC, a benefit of doubt goes to the

accused person. Moreover, the history of the victim before the MO reveals that the victim also revealed another name along with the name of the accused person. The victim has indicated Sri Bablu Murah as her assailant before the MO. Ext. 4 is the Medico-legal Report and Ext. 4(1) upto Ext. 4(3) are the signatures of the MO who examined the victim.

14) The MO Dr. Risha Goswami testified as PW-8 that on 07-09-16, she was working as GDMO in the Department of Forensic Medicine, Assam Medical College & Hospital at Dibrugarh. On that day, she examined the victim 'X' in connection with this case and found the following:

On genital examination: Genital organs healthy. Vulva healthy. Hymen: Old tear at 6 O' clock position. Vaginal healthy. Cervix healthy. Uterus not palpable clinically. Evidence of injury on her body or private parts not detected at the time of examination. Evidence of venereal disease not detected. Vaginal smear taken on glass slides.

On radiological examination: Elbow joint shows epiphycal union completed. Wrist joint shows epiphyscal union completed. Shoulder joint shows epiphyscal union completed. Pelvis shoes iliac crest is united. However, in her opinion, epiphyseal union around iliac crest is not completed. USD obstrstrics showed a single viable foetus is noted with variable presentation. Foetal perametres correspond to gestational age of 16 weeks, 6 days. Foetal heart rate measures 156 bits per minutes at the time of examination. Liquor volume is adequate at the time of examination. Placenta is located at fundus and body wall antero posteriorly. No gross foetal anomalies noted. Active foetal movements noted.

- 15) According to her opinion, the age of the victim was 18 years and below 19 years.
- 16) After assessing the evidence of the MO and the victim, it is held that the victim was a major and she was not so vulnerable despite the fact that she appears to be retarded. The victim's explanation that she was terrified of the accused person, does not appear to be acceptable, because if she was terrified to disclose about the incident, then she would be terrified to give evidence against the accused person in the Court. When she deposed against the accused in the Court, she bravely pointed him out as her assailant. Moreover, there is no evidence of misconception of facts or cheating. The evidence is shrouded by a cloud of mystery. The victim concealed about the incident till she was detected with pregnancy of three months. Considering the age of the victim, her consent to this relationship with the accused person or to Sri Bablu Murah cannot be ruled out. In this manner, the accused also gets a benefit of doubt. The old lady who resides at Jukalbarik's house or Jukalbarik were not produced as witnesses by the prosecution. This also extends a benefit of doubt to the accused person. The victim has described that she was sexually assaulted by the accused only once and she became pregnant. The victim's evidence cannot be accepted as gospel truth.
- 17) Sri Janardan Tanti testified as PW-3 that both the accused and the victim are known to him. The victim is his sister-in-law. One day, his sister Bhagya Tanti informed him that his sister-in-law was pregnant for three months and when he went to her house along with his wife, the victim informed him that the accused impregnated her. So they arranged a meeting, but the accused did not attend the meeting.
- 18) His statement is contradictory, because PW-1 testified that the accused was

- present in the meeting and he denied that he impregnated her daughter.
- 19) Smt. Sita Tanti testified as PW-4 that the accused and the informant are known to her. The incident occurred about two years ago. The victim's mother informed her that the victim was pregnant.
- 20) This witness has not implicated the accused person.
- 21) Smt. Neha Tanti testified as PW-5 that both the accused and the victim are known to her. The incident took place about 7/8 months back. At that time, she accompanied the victim's mother along with the victim, because the victim was pregnant and the accused impregnated her. When the accused denied that he impregnated the victim, they went to the police station and the informant lodged an ejahar against the accused. The police interrogated her and the victim. At present, the victim is blessed with a daughter who resides with her.
- 22) Similarly, Smt. Shivratri Tanti testified as PW-6 that the accused person is known to her and the victim is her younger sister. The incident occurred about two years ago. A meeting was held in her paternal house and she attended the meeting. She was a married woman at that time. Initially, on the first day, the accused did not attended the meeting, but on the second day, the accused attended the meeting and denied that he impregnated her younger sister. Then her sister initiated this case against the accused person. Her sister is blessed with a daughter who is five months old. The police recorded her statement and her sister's statement.
- 23) It is true that the accused may have impregnated the victim and may not have married her, but the evidence of PW-2 and delay in lodgment of the FIR, extends a benefit of doubt to the accused. The evidence of PW-2 depicts that an old lady resides in Jukalbarik's house. It is unfathomable how a man can

forcefully commit rape on a woman in presence of an old lady inside the house. Moreover, if the accused had called her, why did the victim go to his house if she was not a consenting party. As the evidence of the victim does not inspire confidence, so the evidence of the other witnesses cannot be accepted to rope in the accused person with the offence of sexual assault. Moreover, the victim is over 18 years and the accused cannot be held liable under Section 6 of POCSO Act.

- 24) The IO SI Upen Chandra Bora testified as PW-7 that on 06-09-16, he was posted at Tingkhong Police Station as SI and on that day, the OC received an FIR and endorsed him with the investigation of Tingkhong PS Case No. 109/16 under Section 4 of POCSO Act. Ext. 1 is the FIR and Ext. 1(2) is the signature of Biswajit Sharma with which he is acquainted. He found the victim and the informant in the police station and recorded their statements. He also recorded the statements of the other witnesses who accompanied them. On the next day, he forwarded the victim for medical examination. He prepared the Sketch-Map of the place of occurrence. Ext. 2 is the Sketch-Map and Ext. 2(1) is his signature.
- 25) At this stage, I would like to divert the attention towards the Sketch-Map. The Sketch-Map depicts that the place of occurrence is the victim's house which is contrary to the statement of the victim, because she testified that the place of occurrence was Jukalbarik's house. The IO further testified that he met the accused in his house and forwarded him to the jail. He obtained the Medicolegal Report and forwarded the victim to the Magistrate who recorded her statement under Section 164 CrPC. He finally submitted Charge-Sheet against the accused person under Section 4 of POCSO Act, read with Section 376 IPC.

- 26) It has already been held in my foregoing discussions that the evidence of the victim does not inspire confidence. There are too many contradictions in the statement of the victim regarding the place of occurrence. The IO has depicted another place of occurrence in the Sketch-Map. The delay in lodgment of the FIR is another discrepancy in this case.
- 27) Considering the fact that this case is fraught with discrepancies and replete with contradictions, the accused is given a benefit of doubt. It is held that the prosecution failed to prove beyond reasonable doubt that the accused committed rape on the victim by forcefully having sexual intercourse with her against her will and without her consent, or by inducement with misconception of facts.
- 28) As the victim is above 18 years, the accused is also not held guilty of offence under Section 6 of POCSO Act. Thereby, the accused Sri Suresh Paharia is acquitted from the charges under Sections 6, read with Section 5(I) and j(ii) of POCSO Act, read with Section 376 IPC on benefit of doubt and is set at liberty forthwith.
- 29) The victim who has undergone such an ordeal, deserves compensation. This case is thereby recommended for compensation to the District Legal Services Authority, Dibrugarh to decide the quantum of compensation to be awarded to the victim under the Assam Victim Compensation Scheme, 2012.

  Judgment is signed, sealed and delivered in the open Court on the 14<sup>th</sup> day of November, 2018.

Sessions Judge, Dibrugarh

## APPENDIX POCSO Case No. 61/16

## List of witnesses for prosecution:

- 1. PW-1 Smt. Bhagya Tanti;
- 2. PW-2 The victim 'X';
- 3. PW-3 Sri Janardan Tanti;
- 4. PW-4 Smt. Sita Tanti;
- 5. PW-5 Smt. Neha Tanti;
- 6. PW-6 Smt. Shivratri Tanti;
- 7. PW-7 SI Upen Chandra Bora; and
- 8. PW-8 Dr. Risha Goswami.

## List of exhibits for prosecution:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Sketch-Map;
- 3. Ext. 3 Charge-Sheet; and
- 4. Ext. 4 Medico-legal Report.

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