IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.9/2016 (U/S: 365 IPC/4 of POCSO Act)

-State-Versus Bappi Das, S/O- Late Bishnu Pada Das, Vill- Ikrabari, PS-Rowta (Garubandha), Dist-Udalguri (Assam).

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri A. Basumatary, P.P., Udalguri

AND

For the accused: Sri M.C. Narzary, Advocate.

Evidence recorded on: 2.7.16, 4.10.16, 16.11.16, 22.5.17,

4.8.17, 17.11.17, 9.2.18.

Argument heard on: 11.6.2019.

Judgment delivered on: 25.6.2019.

<u>J U D G M E N T</u>

1. The prosecution case, bereft of unnecessary details, is that on 5.3.2016 the informant Santosh Biswas lodged a written report with the In-charge of Ikrabari Police Out-Post alleging, inter-alia, that on the same day at around 6.15 PM while his minor daughter (real name is withheld, henceforth referred as the victim) was proceeding towards house from the Ikrabari market alongwith a minor girl aged about 7 years to her home, at that time the accused Bappi Das seeing the victim coming through a deserted road, the accused who was coming in a motor bike suddenly got down from his motor-cycle and pressed in the

mouth of the victim with a view to outrage her modesty. At that time the other minor girl, who was accompanying his daughter, was crying out of fear. At that moment Nirmal Biswas and Sanjoy Biswas while returning from the market noticed the incident and when they tried to apprehend the accused he fled away.

- 2. Basing on the written report and treating the same as FIR the In-charge of Ikrabari Police Out-Post recorded GDE No.69 dated 5.3.2016 and forwarded the FIR to the Officer-In-Charge of Rowta PS for registering a case. Whereupon the In-charge of Ikrabari Police Out-Post also took up investigation of the case on the basis of the GD entry recorded by him.
- 3. On receipt of the FIR, the Officer In-charge, Rowta Police Station registered a case vide Rowta P.S. case No.31/2016 U/S 341 IPC R/W Section 8 of the POCSO Act and endorsed the case for investigation to the In-charge of Ikrabari Police Out-Post who had undertaken the preliminary investigation of the case. In course of investigation, the investigating officer visited the place of occurrence, recorded the statement of available witnesses including the victim U/S 161 Cr.P.C. and got the statement of the victim recorded U/S 164 Cr.P.C. before the Magistrate, the accused was arrested and sent him to custody, the I.O. sent the victim for medical examination and procured her medical examination report, one motor-cycle was seized in connection with the incident. On conclusion of the investigation charge-sheet was laid against the accused Bappi Das U/S 341 IPC and 8 of POCSO Act to face trial.
- 4. On receipt of the charge-sheet cognizance of the offences were taken and attendance of the accused was procured by the process of the court to face trial. Upon perusal of the entire materials of the case record including the police papers furnished U/S 173 Cr.P.C. my learned predecessor in office having found a prima-facie case and sufficient ground to proceed against the accused Bappi Das U/S 8 of POCSO Act framed charge thereunder and the same on being read

over and explained to him to which the accused pleaded not guilty and claimed to be tried.

- 5. In order to bring home the charges, the prosecution examined as many as eleven witnesses including the informant, victim, and I.O. of the case. The prosecution also relied on some documentary evidence marked as exhibits.
- 6. In the light of the above perspective, the point for determination in the present case is set up and framed as:-
- (1) Whether the accused on 5.3.2016 at about 6.15 PM at village Ikrabari under Rowta police station committed sexual assault upon the victim, aged 13 years as alleged U/S 8 of POCSO Act?
- 7. On completion of recording evidence the statement of the accused was recorded U/S 313 Cr.P.C. He has taken the plea of innocence and false implication. However, defence laid no evidence.
- 8. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREFOR:

9. PW1 is Dr. Subhas Ch. Basumatary who examined the victim on 7.3.2016 in connection with this case and found the following:-

Lacerated injury to the left middle to the anterior tibia, size- length 1 and $\frac{1}{2}$ cm and depth $\frac{1}{2}$ cm. Bleeding was fresh. Radiological report not done. Nature of injury- simple and recent. Ext.1 is the medical report, wherein Ext.1(1) is his signature.

On the same day the doctor also examined one Kunjalata Singha and found no injury. Ext.2 is the medical report and Ext.2(1) is his signature.

- 10. PW2 is Sri Chakradhari Laskar. He is a reported witness. His evidence discloses that he came to know that on the day of occurrence victim went to the garment shop of the accused. When the victim girl left the shop of the accused then the accused followed the victim girl in his motor-cycle and at the place of occurrence accused parked his motor-cycle and pushed the victim to a nearby jungle. He came to the place of occurrence and found the motor-cycle of the accused lying on the road.
- 11. In cross-examination, he has stated that there are some houses nearby the place of occurrence. He also came to know that another girl was with the victim at the time of occurrence. But he knows nothing about the occurrence.
- 12. PW3 is Sri Sanjoy Biswas. As per his evidence it emerges that the occurrence took place at Tiniali near a LP shcool at Fakidia. At the time of occurrence he was proceeding home from Ikrabari alongwith his friend Nirmal Biswas. He saw a bike parked beside the road at said Tiniali. He also saw another girl standing at some distance from the bike with a bicycle. That girl was his friend's sister. On being enquired the girl told him that she had come alongwith the victim. She also told him that the victim was in the jungle nearby the road. He alongwith Nirmal also saw the victim and accused person together beside a "Dong" ditch). Nirmal then tried to apprehend the accused, but he fled away by pushing down Nirmal. He did not ask anything to the victim girl. He then informed the matter to his father, who is VDP secretary. His father came to the place of occurrence and then informed the matter to the police.
- 13. In cross-examination, he has disclosed that at the time of occurrence it was twilight. He saw accused Bappi Das lying with the victim embracing her. He did not state before the police that he saw accused Bappi Das lying with the victim girl embracing her. He also did not state to police that the victim told him that accused did not have sexual intercourse with her. He also did not raise any objection or uttered any word.

- 14. PW4 is Sri Sailen Biswas. He has deposed that the occurrence took place about 8/9 months ago at about 6/6.30 PM. He is VDP secretary of village Fakidia and the occurrence took place at Ikrabari near a LP school. At the time of occurrence he was at Ikrabari market. Then his son Sanjoy Biswas (PW3) rang him up in his mobile and asked him to come to the place of occurrence immediately. Immediately, thereafter, Nirmal Biswas also asked him over phone to come to the place of occurrence. Accordingly, he proceeded to the place of occurrence hurriedly. On reaching the place of occurrence he found Sanjoy Biswas and Nirmal Biswas at the place of occurrence. Also he found the victim girl at the place of occurrence alongwith another girl of tender age about 8 years. On being asked Nirmal Biswas told him that accused Bapi Das took away the victim to a nearby jungle. He did not find the accused at the place of occurrence but his motor cycle was found parked beside the road. He then informed the matter to Ikrabari police out post over phone. He did not ask anything about the incident to the victim girl. The victim girl is aged about 16-17 years. During investigation police seized the motor cycle of accused Bapi Das vide Ext.1 wherein Ext.1(1) is his signature.
- 15. In his cross-examination, he has denied the suggestion that neither Sanjoy nor Nirmal asked him to come to the place of occurrence.
- 16. PW5 is Sri Santosh Biswas. He has stated in his evidence that the occurrence took place at about 6/6.30 PM. At the time of occurrence he was at his home. The grocery shop of Niranjan Biswas is situated nearby his house. Niranjan Biswas came to his home and asked him to go to the place of occurrence which is situated about ½ KM away from his house. Accordingly he went to the place of occurrence. Already In-charge of Ikrabari O.P. came to the place of occurrence. He found VDP secretary Sailendra Biswas, Indra Mohan Singha at the place of occurrence. On being asked his daughter told him that while she was coming home riding her bicycle alongwith another younger girl accused who was proceeding in a motor cycle pushed down her on the road and

took her to a nearby 'Khal' (ditch). He lodged FIR narrating the incident in detail which was written by another person wherein he put his thumb impression.

- 17. In his cross-examination he stated that his victim daughter sustained some injuries on her leg at the time of occurrence. He has denied the defence suggestion that his victim daughter sustained injury on her leg as her bicycle got dashed against the motor cycle of the accused. He has also denied the defence suggestion that the victim did not tell him that she was pushed down by the accused and the accused took her to a 'Khal' (ditch).
- 18. PW6, Sri Indra Mohan Singha has deposed in his evidence that on the day of occurrence at about 5 to 6 PM he was coming from market alongwith Sailen Biswas. Sailen Biswas was informed by Sanjoy Biswas that an incident took place at village Fakidia infront of house of village Headman Sukur Basumatary. Then they rushed to the place of occurrence where they saw two girls including the victim. The other girl Kunjalata was crying and they asked why she was crying. Then she told that Baapi pushed her and took away the victim in the nearby jungle. Accused fled away from the place of occurrence leaving his bike parked on the road. Police was informed who immediately came to the place of occurrence and brought the motor-cycle alongwith the girl to the police station.
- 19. In cross-examination, he has stated that though police recorded his statement but he does not remember as to whether he stated before the police that the victim was pushed by accused in the nearby jungle. He has denied the defence suggestion that he stated before the police that two girls were surrounded by their village people. On being asked the person who is in the motor-cycle fled away from the place of occurrence keeping the motor-cycle in the place of occurrence. He did not see the incident. He also told that the girl did not state before him that the accused did not have sexual intercourse with her.

- 20. PW7 is the victim of the case. Her evidence demonstrates that the accused is known to her. On the day of occurrence at about 4 PM she went to the shop of the accused, who has a shop of garment at Ikrabari. Her cousin sister Kunjalata was also accompanied with her. She had to sit in the shop because the accused called her to wait for giving cloth. At about 6 PM accused gave her cloth. Thereafter, they came towards home riding bicycle. Then accused came by riding his bike and pushed her and grabbed her and also touched her breast. She fell down in a drain. Seeing the incident her sister Kunjalata was weeping. When Nirmal and Sanjoy came, the accused fled away. The accused had torn her cloth. Police produced her before the Magistrate and recorded her statement where she put thumb impression.
- 21. In cross-examination, she has stated that prior to incident she alongwith her mother went to the shop of accused for purchasing garment. After two days when she again went to the shop of accused the incident took place. Police recorded her statement where she divulged about the incident. At the time of recording statement Kunjalata, her father, Sailen Biswas, Indra Mohan Singh, Nirmal Biswas and other villagers were also present at the police station. She has denied the defence suggestion that she did not state before the police that on the date of incident she went to the shop of accused and purchased one top. Thereafter, they were roaming in the market area. When it became dark while they were proceeding towards home near 559 L.P. School on the road the boy restrained her, who was riding a motor-cycle. She got frighten and the boy pushed her and she fell down in a nearby drain. The boy fled away keeping the motor-cycle. The name of the boy is Bapi. When the local people gathered and informed police the motor-cycle was brought to the police station. The accused did not commit rape on her. She sustained injury on her leg by falling. The accused did not do anything prior to the occurrence.
- 22. PW8 is Miss Kunjalata Singha. According to her evidence victim is her elder sister. She went to Ikrabari market alongwith her victim sister for purchasing her garments. They purchased garments from the shop of accused

Bappi. Thereafter, they were proceeding towards home on a bicycle. At that time it was 6 PM. Suddenly Bapi came and pushed the victim. Both of them fell down. The accused dragged the victim towards a "Dong" (ditch). The accused touched breast of the victim. She used to weep. Nirmal came to the place of occurrence. She informed Nirmal about the victim. Then the accused fled away.

- 23. In cross-examination, she has stated that the accused did not do anything to the victim.
- 24. PW9 is Nirmal Biswas. He has stated that on the day of occurrence in the evening while he alongwith VDP secretary Sailen Biswas were returning from Ikrabari market, near L.P. School they saw a bike which was parking near a tree. Then they saw that Kunjalata was weeping. On being asked kunjalata informed them that a boy had taken the victim towards jungle. There were also two drains in that area. They made search of the victim but could not trace out. After 3/4 minutes accused Bapi pushed the victim and fled away.
- 25. In cross-examination, he has revealed that the victim knows accused Bappi prior to the incident and used to purchase cloth from his shop. He stated before the police that near Tiniali one boy by parking his bike restrained two girls and talked something with them and when the girls raised alarm he said "who-who" then he fled away. The victim told him that she sustained injury on her neck.
- 26. PW10, Smti. Dipali Biswas is the mother of the victim. As per her testification the victim is her daughter. Prior to incident she went to the shop of accused to bring cloth. One garment was not given to her and the accused said to come another day. After 2 days again she again went to his shop but the accused did not give her the garment. Then she sent her victim daughter to the shop of the accused at about 4 PM. The accused told her daughter to sit and she remained in the shop of accused till 6 PM and thereafter, the accused handed over the garment to her. Then her daughter returned home by riding bicycle.

The accused came on bike. On seeing the accused her daughter gave him side. Then the accused stopped his bike and got down and pushed her daughter on a ditch and embraced her daughter. Her daughter raised alarm. Then the accused gagged her mouth. The accused touched her private parts. When Nirmal and Sanjoy came the accused fled away by pushing again her daughter. Nirmal informed secretary/president of VDP. Then her daughter was taken to police station. Her husband lodged an FIR in this regard.

- 27. In cross-examination, she has stated that she was not present at the place of occurrence. Her daughter informed her about the incident. She has denied that she did not state before the police that she met her daughter in the police station and her daughter stated that accused did not do bad thing with her daughter but touched her chest. She did not go to the place of occurrence.
- 28. PW 11, Bhusan Chandra Nath is the Investigating Officer of the case. He has deposed that on 05.03.2016 he was posted at Ikrabari OP as I/C. On that day, they received an information from the VDP secretary Sailen Biswas of village Fakiadia. After making GD entry No. 69 dated 05.03.2016 he went to the place of occurrence. He found a bike at the place of occurrence and two girls. He seized the motorcycle and brought the motorcycle and two girls to the police station. He recorded the statement of the victim and the other girl at the police station. The father of the victim girl lodged an FIR at the same night by putting his thumb impression. Ext. 3(1) is his signature with note. He registered the case being Rowta PS Case No. 31/2016. The O/C entrusted him to investigate the case. Ext. 3(2) is the signature of the O/C, Dipankar Gogoi. He seized the birth certificate of the victim. Ext. 4 is the seizure list. Ext. 4(1) is his signature. Ext. 1 is another seizure list and Ext. 1(2) is his signature. After completion of the investigation he filed the charge-sheet against the accused. Ext. 5 is the charge-sheet. Ext. 5(1) is his signature.
- 29. In cross-examination he has stated that he got an information that in Fakidia village near Boro Chuba one boy restrained two girls and the boy fled

away leaving the motorcycle. He denied the suggestion that the victim girl stated before him that she knows the boy Bappi. The boy did nothing with her when she fell down she sustained injury on her leg. The other girl told him that the accused did not commit sexual assault.

- 30. On the backdrop of conspectus of evidence discussed above and before careful scrutiny thereof, it appears that the accused stands charged U/S 8 of the POCSO Act on the allegation that on the day of occurrence the accused committed sexual assault upon the victim.
- 31. In the present case, there was no eye witness to the occurrence except the victim (PW7) and her sister (PW8) Kunjalata Singha with whom the victim was coming from the garment shop of the accused when the occurrence had taken place. In that view of the matter, the evidence of the victim (PW7) as well as the evidence of PW8 are of utmost importance to romp home the charge levelled against the accused. That being the position the evidence of the victim (PW7) and PW8 are analysed in proper perspective prior to other evidence on record.
- 32. It is in this backdrop, on minute scrutiny of the testimony of the victim (PW7) it appears that her lackluster evidence is not worthy of any credence as there is no cogent and consistent evidence in her testimony to prove the culpability of the accused. In cross-examination, she has unequivocally stated that the accused did not commit rape on her. Rather she sustained injury on her leg by falling while coming from the shop of the accused after collecting her garment near No.559 L.P. School on the road. She has further stressed in her cross-examination that the accused did not do anything prior to the occurrence which shows there is not a speck of incriminating evidence in the testimony of the victim (PW7) though she has alleged to have been molested as disclosed in the FIR (Ext.3).

- 33. If we now turn to the evidence of PW8, who is an eye witness to the occurrence, it appears that her evidence is also found to be sketchy and fragile as she has only made some irreconcilable evidence which bring us nowhere to establish the guilt of the accused so much so that this witness in cross-examination has stated that accused did not do anything to the victim on the day of occurrence. As a result of such docile statement without disclosing any incriminating circumstance against the accused, the evidence of the PW8 is also not at all worthy of credence to bring home the guilt of the accused as it has already been seen from the testimony of the victim (PW7) also that she has also failed to bring truth any credible evidence to sustain the charge against the accused. That apart, the testimony of the medical officer (PW1), on the other hand, shows that the victim sustained recent simple injury. This is also exhibited in his medical report marked as Ext.1.
- 34. Now, if we go by the evidence of these vital witnesses PW7 and PW8, it would appear that neither the victim (PW7) nor PW8 have disclosed as to how the victim (PW7) sustained such simple injury where a bike was found at the place of occurrence belong to the accused. As a result of inconclusive evidence adduced by the victim (PW7) and PW8, it may be such that the victim might have sustained minor injury when the motor-cycle was driven by the accused and hit her bicycle in a reckless manner and after the accident the accused fled away leaving his motor-cycle on the road.
- 35. Lastly, the evidence of PW2, PW3, PW4 and PW5 are found to be simply hearsay evidence. They have stated in point blank that they were not present when the alleged occurrence took place. PW5 and PW6 have stated that when they were coming by that road they only saw PW8 was crying and a motor-cycle was parked on the road. They have also stated that they did not ask the victim (PW7) as regards the incident nor the victim stated anything to them would go to show that the very genesis of the prosecution case is doubtful to establish the guilt of the accused as to his commission of sexual assault on the victim which gets no support from the victim herself and the other witness PW8. There is

being virtually no incriminating as well as plausible evidence at all to bring home the guilt of the accused it leads me to hold that the prosecution case has remained unproved and, therefore, the accused is entitled to acquittal.

- 36. For the reasons aforesaid, on the basis of the evidence on record, , I am constrained to hold that the accused Bappi Das is not guilty U/S 8 of the POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.
- 37. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 25th day of June,2019 .

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Subhas Ch. Basumatary ii)PW2 Chakradhari Laskar iii)PW3 Sanjoy Biswas Sailen Biswas iv)PW4 v)PW5 Santosh Biswas vi)PW6 Indra Mohan Singha vii)PW7 Sangita Biswas Kunjalata Singha viii)PW8 ix) PW9 Nirmal Biswas x) PW10 Dipali Biswas xi) PW11 Bhushan Ch. Nath

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical examination report ii)Ext.2 Medical examination report

iii)Ext.3 FIR

iv) Ext.4 Seizure list v)Ext.5 Charge-sheet.

Dictated and corrected by me.

Special Judge, Udalguri