### **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.40/2018

U/S- 376/511 of IPC, R/W Section 8 of the POCSO Act, 2012.

State of Assam

-Versus-

Sri Anupam Das

s/o-Lt. Ajit Das

Resident of vill –Dohali (Tamulbari)

P.S.-Palashbari

Dist- Kamrup (R)

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

Mr. Biswajit Paul, Ld. Advocate ------for the accused

Date of evidence:09.11.2018, 21.01.2019, 14.03.2019 and 26.04.2019.

Date of Argument: 15.07.2019

Date of Judgment: 29.07.2019

#### **JUDGMENT**

- 1. The Prosecution case in brief is that—on 23.05.2018, the complainant Smti. Malati Nath lodged an ejahar alleging that on 22.05.2018 at about 8.30 p.m, the accused—Sri Anupam Das attempted to commit rape upon her minor daughter by gagging her mouth with a piece of cloth, when she was alone in her house. Hence, this case.
- 2. On the basis of the said ejahar, Palashbari P.S Case No. 179/2018 U/S-376/511 IPC, R/W Section 8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 376/511 of IPC, R/W Section 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court, after hearing both the parties, framed charges U/S- 376/511 of IPC, R/W Section 8 of the POCSO Act, 2012, against accused person— Anupam Das. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 6 (six) witnesses including the informant and the victim girl.

#### 5. POINT FOR DETERMINATION:-

- (I) Whether the accused person on 22.05.2018 at about 4.30p.m attempted to commit rape on the minor daughter of the Complainant and thereby committed an offence punishable under section 376/511 of IPC?
- (II) Whether the accused person on the same date, time and place entered into the house of the informant and committed sexual assault upon the Complainant's minor daughter and thereby committed an offence punishable under section 8 of the POCSO Act, 2012 ?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

6. In this instant case, accused is charged u/s 376/511 IPC r/w Section 8 of POCSO Act.

Section 376/511 IPC deals with attempt to commit rape.

Now , section 8 of POCSO Act, 2012 provides "whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 3 years but which may extend to 5 years, and shall also be liable to fine."

- 7. To decide the above sections of law, let us go through the evidences of the witnesses alongwith the relevant documents.
- 8. P.W.1 is the informant of this case. She has deposed in her evidence that she knows the accused person. Prosecutrix is her daughter. She was 15 years old at the relevant time. The incident took place about 6 months ago at about 4.00/4.30 p.m. She further deposed that on the date of occurrence, at around 3 p.m, she had gone to her son-in-law's house at Dokhola. The prosecutrix/victim was alone in the house. Then, the accused—Anupam Das came to her house while the victim brooming the house and asked her to give him a piece of betel nut. When the victim told the accused that there were no betel-nut in their house, then the accused caught hold of her hand and took her inside the house. Thereafter, the accused gagged the mouth of the victim with a piece of cloth and pressed her mouth with his hand and then, the accused pushed the victim on the bed and was lying over her and was kissing her on her cheeks. At that moment, the informant reached home. On coming to know of arrival of the informant, the accused fled away from her house in front of her. She found that the mouth of the victim was gagged with a cloth. She opened the piece of cloth from the mouth of the victim and enquired about the incident, which she narrated to her. Thereafter, on the next day, P.W.1 lodged the ejahar. Police recorded her statement.

In her cross-examination, P.W.1 has stated that she put thumb impression in the ejahar after the same was written and the contents of the ejahar was read over to her.It takes about ½ an hour to reach her son-in-law's house from her house by vehicle. She stayed there for half an hour and returned back. She further disclosed that she had reached the courtyard of her house when the accused came outside from her

house. On next day morning at about 9.00 a.m they went to Bijoynagar out post to lodge the ejahar.

9. P.W.2, prosecutrix deposed in her evidence that informant of this case is her mother. She knows the accused. At the time of incident, she was 15 years old. On the date of occurrence, she was alone inside her house. Her mother had gone to the house of her brother-in-law. Accused came to her house and called her from outside. Accused called her by her pet name 'Tarali'. Then, the accused asked her where her parents had gone. She told him that they are not at home and her father had gone to Shillong. Then the accused asked P.W.2 to bring a betel nut. She told him that there was no betel nut in her house. Then the accused grabbed her hand and took her inside the house. When she asked him to leave her hand, he then took a piece of cloth which was lying in her house, gagged her mouth and pushed her on the bed. P.W.2 stated that the accused got on the top of the victim and planted kisses on her cheeks. At that moment, her mother (P.W.1) arrived. On coming to know of her arrival, the accused fled away from her house. Her mother came inside the house and P.W.2 told her about the incident by removing the cloth from her mouth. Then, her mother told the incident to their neighbour—Dalimi. And at around 12 mid night, P.W.1 went to SDC and told him about the incident. Next morning, P.W.2 came with her mother to the Police Station to lodge the ejahar. Police sent her for her medical examination and brought her before the Magistrate for recording her statement. Police recorded her statement. Ext.1 is her statement. Ext. 1 (1 & 2) are her signatures.

In her cross-examination P.W.2 deposed that accused is her neighbour and he is the friend of her brother—Rubul Nath and that the accused had come to her house on three occasions before the occurrence for working as a labour. Police visited her house and seized the piece of cloth by which the accused had gagged her mouth. Police did not produce her before the State Women Commissioner.

10. P.W.3, Sri Kandarpa Das has stated in his evidence that informant of this case is his mother-in-law. Prosecutrix is her sister-in-law. At the relevant time, prosecutrix was 14 years old. He knows the accused. The incident took place on 22.05.2018 at about 4.30/5.00 p.m. and at that time, he was in his work place. At 5.00 p.m, his wife—Sumitra Das rang him and told him that the accused—Anupam Das attempted to rape the prosecutrix and she asked him to return home. Then, P.W.3

returned and asked his mother-in-law (informant) about the incident. She told him that she had gone to her middle daughter's house in Nawpara by leaving the prosecutrix alone in the house. Then, the accused came and enquired about their whereabouts and asked betel nut from the prosecutrix. P.W.2 (prosecutrix) told the accused that she does not know where her mother keeps the betelnuts. Then, the accused pulled her hand and took her inside her house. The accused pushed her on the bed and touched her private parts and he kissed her on her cheeks. On arrival of the informant (P.W.1), the accused fled away from the house. P.W.1 raised hue and cry. Neighbours gathered in her house. They informed the incident to their relative—Dinesh Nath, retd. ADC, who advised them to lodged an ejahar against the accused and wrote the same for them. They took the ejahar to the Palashbari but the police did not accept the said ejahar. Thereafter, the informant lodge an ejahar. Police obtained his signature in a piece of paper. Ext.2 is the seizure list. Ext. 2 (1) is his signature. Police recorded his statement.

In his cross-examination P.W.3 disclosed that his fruit shop is located in Bijoynagar town, which is about 2 km away from the house of the informant. His wife heard the incident from her mother (informant) and then she told him over phone. P.W.3 did not state before the police that accused tried to attempt to rape the prosecutrix and that the informant had gone to Nawapara by leaving the prosecutrix at home alone on the day of occurrence. P.W. 3 did not remember if he told the police that accused touched the private parts of the prosecutrix. P.W. 3 did not state before the police that prosecutrix raised hue and cry after hearing the incident. P.W.3 alone went to the house of relative—Dinesh Nath at 7.00 p.m. he wrote the ejahar for the informant and P.W.3 was not present at that time. He also advised the informant. P.W.3 did not see the first ejahar written by Dinesh Nath. Police obtained his signature in a blank paper. He did not know what is written in Ext.2.

11. P.W.4, Smti. Archana Nath has deposed that she knows both the parties. She also knows the prosecutrix. The incident took place on 22.05.2018 in the evening hours. At the relevant time, prosecutrix was 14 years old and was studying in class-VIII. P.W.4 was present in his house at the time of occurrence. She heard the shouts of the informant. At this, she went to her house. She and prosecutrix told her that when the prosecutrix was alone in the house, then the accused came to their house and he enquired about the whereabouts of her parents. She told him that her mother had gone to her elder sister's house and father is in Shillong. Then, the accused

asked betel nut from the prosecutrix. She told the accused that she does not know about the betel nuts. Then, the accused pulled her hand and took her inside her house forcibly. The accused tied her mouth with a 'gamocha' and he pushed her on the bed. He planted kisses on her cheeks. On arrival of the informant, the accused fled away from the house. The informant enquired about the incident from the prosecutrix. On hearing about the incident, she raised hue and cry. Neighbours gathered in her house. Thereafter, the informant lodged the ejahar. Police recorded my statement. Police obtained her signature in a piece of paper. Ext.3 is the seizure list and Ext. 3 (1) is her signature.

In her cross-examination P.W.4 disclosed that she heard about the incident at 6/6.30 p.m. There are about 5 houses between her house and the house of the informant. She did not hear the shouts of the prosecutrix from her house. Further P.W.4 disclosed that accused works as a daily labour in the village and he used to work in the house of the informant also.

12. P.W.5, Sri Rajdhar Nath has deposed that he knows the informant of this case. He also knows the accused person. The incident took place about a year ago. He was out of home at the time of occurrence. Next day, he returned home and heard from the neighbours that accused came to the house of the informant and he caught hold of her daughter and pressed her body. Police recorded his statement.

In his cross-examination P.W.5 deposed that he is a driver by profession and his work place is Guwahati. He stays in a rented house at Dohali. He heard the incident from informant—Malati Nath.

13. P.W.6, ASI Sri Manmohan Das has deposed in his evidence that on 23.05.2018, he was working as ASI at Bijoynagar P.P under Palashbari P.S. On that day the informant—Smti. Malati Nath lodged an ejahar in Bijoynagar P.P. Thereafter i/c, Bijoynagar P.P gave a G.D. Entry bearing No. 550 dated 23.05.2018 and directed him to investigate the case. Thereafter, he sent the ejahar to Palashbari P.S to register a case. Then O/C, Palashbari P.S registered a case bearing Palashbari P.S Case No.179/2018 U/S-376/511 of IPC R/W section 8 of POCSO Act, 2012. In the meantime, he recorded the statement of the informant and victim in the police station itself. On that day, he also visited the place of occurrence along with the staffs. P.W.6 recorded the statements of the witnesses. P.W.6 prepared the sketch map. P.W.6 seized the piece of

cloth by which the accused gagged the mouth of the victim. Ext.2 (2) is his signature in the seizure list (Ext.2). Material Ext. 'A' is the seized article which is seen by him in the court. P.W.6 also recorded the statement of the seizure witness—Kandarpa Das. P.W.6 found the accused—Anupam Das and brought him to the police station for recording his statement. And on finding sufficient material against the accused he arrested him on 24.05.2018 and forwarded him to the Court. On that day, he sent the victim to the court for recording her statement U/S-164 Cr.P.C. P.W.6 also sent the victim on 25.05.2018 for medical examination but she refused to get herself examined by the doctor. On 26.05.2018 the informant produced the original Birth Certificate of the victim. He seized the same and later on gave it in their zimma. Ext.3 (2) is his signature in seizure list (Ext.3). P.W.6 also recorded the statement of seizure list witness-Archana Nath. Thereafter, he completed the investigation and on finding sufficient evidence against the accused person, he submitted the charge-sheet on 31.05.2018 against the accused person—Anupam Das U/S-376/511 of IPC R/W section 8 of POCSO Act. Ext.4 is the sketch-map and Ext.4 (1) is his signature. Ext.5 is the charge-sheet and Ext.5 (1) is his signature

In his cross-examination P.W.6 stated that P.W.1 did not state before him that she had gone to her son-in-law's house on the date of occurrence. P.W.2 did not state before him that the accused calls her as 'Tarali'. P.W.2 did not state before him that the accused pushed her on the bed and that her mother had gone to meet the SDC. P.W.4 did not tell her that she heard about the incident from the informant and prosecutrix. The incident took place on 22.05.2018 at 4.30 p.m as per the FIR. The ejahar was lodged on 23.05.2018 at 3.00 p.m. The seized article was not sealed. P.W.6 handed over the seized article to the Sheristadar, Palashbari P.S in a polythene packet after giving MR number and putting label over it. The seized article thereafter put inside in an envelope and was pinned up.

- 14. At the close of prosecution evidence, statement of the accused person U/S-313 Cr. P.C has been recorded. He denied committing the offence and declined to adduce evidence. During his examination U/S-313 Cr. P.C, the accused pleaded innocence and stated that he did not do anything with the victim, as alleged.
- 15. I have heard the arguments of the Learned Counsels for both the sides. Learned Counsel for the accused submitted that there has been delay in lodging the

ejahar and the ejahar is an after-thought. He submitted that the accused has been falsely implicated in the case. Perusal of the ejahar reveals that the incident occurred on 22.05.2018 at 4.30 p.m and the ejahar was lodged by the informant on the next day i.e. 25.05.2018. The delay has been explained satisfactorily by the witnesses by stating that the incident was immediately informed to their relative (SDC/ADC) at night hours. And the ejahar written by him was not accepted by the police. So, the argument led by the learned Counsel for the defence has no force. The learned Additional Public Prosecutor submitted that the case has been well proved against the accused person. Though, it was argued on behalf of the accused that he has been falsely implicated in the case due to enmity, but the accused failed to discharge the onus of proving that he has been falsely implicated in the case due to enmity or any other reason Defence side failed to show any previous enmity between the accused and the informant or the victim. So, the plea taken by the defence of false case is of no value.

16. From a close perusal of the evidence on record, it is seen that the victim (Pw- 2), who is the star -witness of the instant case has alleged that on the date of occurrence, while she was alone inside her house, then the accused came to her house and called her from outside. He enquired the whereabouts of her parents. It is in the evidence of P.W.2 that when she told the accused that her parents were not at home, then the accused asked her to bring a betel nut. She told him that there was no betel nut in her house, then the accused grabbed her hand and took her inside the house. When P.W.2 asked him to leave his hand, then the accused took a piece of cloth which was lying in her house, gagged her mouth and pushed her on the bed. This witness further alleged that the accused sat on the top of her and put kisses on her cheeks. At that moment, her mother (P.W.1) arrived. On coming to know of her arrival, the accused fled away from her house. Her mother came inside the house and she told her about the incident by removing the cloth from her mouth. Pw- 1 is the eye-witness. Her evidence is that on the date of occurrence, at around 3 p.m, she had gone to her son-in-law's house at Dokhola. The prosecutrix/victim (P.W.2) was alone in the house. Then, the accused—Anupam Das came to her house and asked P.W.2 to give him a piece of betel nut. When P.W.2 told the accused that there were no betel-nut in their house, then the accused caught hold of her hand and took her inside the house. Thereafter, the accused gagged the mouth of the victim with a piece of cloth and pressed her mouth with his hand and then, the accused pushed the victim on the bed and was lying over her and was kissing her on her cheeks. At that moment, P.W.1

reached home. On coming to know of arrival of P.W.1, the accused fled away from her house in front of her. P.W.1 disclosed that she found that the mouth of P.W.2 was gagged with a cloth. P.W.1 opened the piece of cloth from her mouth and enquired about the incident, which P.W.2 narrated to her. Furthermore, P.W.2 has fully corroborated the statement made by her before the Magistrate U/S-164 Cr. P.C. (Ext.1). So, she is found to be reliable witness and not tutored by her guardians.

- 17. It is settled law that conviction on the sole evidence of child witness is permissible , if such witness is found competent to testify and court , after careful scrutiny of the evidence finds it to be reliable and trustworthy.
- 18. In the present case, the victim has stated her age to be 15 years on the date of occurrence. Even her mother P.W.1, P.W.3 and P.W.4 supported her. So, the victim was below 18 (eighteen) years of age at the time of incident. Therefore, victim was a 'child' as per section 2 (d) of POSCO, Act.
- 19. In the light of the evidence of the victim (P.W.2) as well as her mother (P.W.1) complied together with the evidence of other witnesses, this court can presume under Section 29 of the POCSO Act , 2012 that it was the accused, who had committed sexual assault upon the victim and the sexual intent as required as per Section 7 of POCSO Act , 2012 can also be presumed in the light of Section 30 of the Act. It was for the accused to rebut that neither he has any sexual intent nor he had committed the offence by proving their contrary. No evidence led by the accused in his defence to prove his innocence.
- 20. The accused is charged under Section 8 of POCSO Act, 2012. From the evidence of the victim, it can be safely presumed that the offence committed by the accused falls under Section 7 of the Act which reads as follows:

### 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 is said to commit sexual assault." The punishment for sexual assault is laid down under Section 8 of POCSO Act.

- 21. As regards charge under section 376/511 of IPC, none of the witnesses have stated that the accused attempted to rape or commit sexual intercourse with the victim. Nothing of this sort is there in the testimony of the victim. She has refused to do medical examination. Therefore, there is nothing on record which indicates that the accused tried to commit rape on the victim. So, he is acquitted of the charge U/S-376/511 of IPC.
- 22. In the result, it is held that the prosecution has succeeded in bringing home the charge U/S 8 of the POCSO Act against accused— Sri Anupam Das beyond all reasonable doubt. Hence, he is held guilty of committing the offence punishable under section 8 of the POCSO Act and is convicted under the said section of law.
- 23. Considering the facts and circumstances of the case and the nature of the offence committed by the accused, he is not entitled to get the benefit of Probation of Offender Act or under section 360 Cr.p.c.

### 24. **SENTENCE**

Heard the accused on the question of sentence. Also heard the Learned Defence Counsel as well as the learned Addl. Public Prosecutor. Accused has stated that he has not committed the offence and he has no earlier criminal antecedent. He submitted that he is a labour and he has his parents to look after. He has pleaded leniency in awarding the punishment. The penal provisions of the POCSO Act, 2012 are very stringent in nature. Section 8 of the POCSO Act, 2012 prescribes that minimum punishment of 3 (three) years and maximum punishment of 5 (five) years for the offence of sexual assault. Under such circumstances, this court does not have the discretion to impose a lesser sentence than the minimum prescribed by the statute.

25. Considering the entire facts and circumstances of the case, the nature of the offence and the mental injury suffered by the child victim, the accused –Anupam Das is sentenced to undergo rigorous imprisonment for 3 (three) years and to pay a fine of Rs. 5,000/- (Rupees five thousand) only in default to undergo rigorous imprisonment for another 6 (six) months, for the offence under section 8 of POCSO Act, which in my opinion , will meet the ends of justice in this case.

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26. The period of detention already undergone by the accused will be set off

from the period of imprisonment.

27. Now, coming to the aspect of compensation to the victim, who is a minor

girl. It is found that she has suffered mental agony as a result of the sexual act

committed upon her. She needs to be provided with restorative and compensatory

justice. So, the Learned Secretary, District Legal Service Authority, Kamrup, Amingaon

is directed to assess and grant adequate compensation to the victim (P.W.2). The said

compensation amount shall be used by the parents of the prosecutrix for her welfare.

28. The Judgment is delivered in open Court and written on separate sheets.

29. A free copy of the Judgment be furnished to the convict immediately. A

copy of this order and Judgment be sent to the District Magistrate, Kamrup, Amingaon

as per provision of law.

Given under my hand and seal of this Court on this 29<sup>th</sup> day of July, 2019.

Special Judge,

Kamrup, Amingaon

Dictated and corrected by me

Special Judge,

Kamrup, Amingaon

## APPENDIX

# **Prosecution Witness:**

P.W.1, informant

P.W.2, prosecutrix

P.W.3, Sri Kandarpa Das

P.W.4, Smti. Archana Nath

P.W.5, Sri Rajdhar Nath

P.W.6, ASI Sri Manmohan Das

# **Prosecution Exhibit**

Ext.1 is the statement of the victim recorded U/S-164 Cr. P. C.

Ext.2 is the seizure list

Ext.3 is the seizure list

Ext.4 is the sketch-map

Ext.5 is the charge-sheet

Special Judge, Kamrup, Amingaon