CAUSE TITLE POCSO Case No. 14/17

Informant: Smti. Lakhi Murah,

S/o- Sri Sanjay Murah,

R/o- Kalyanpur, PS- Tingkhong, District- Dibrugarh.

Accused: Sri Sanjay Murah,

S/o- Sri Rengla Murah,

R/o- Kalyanpur, PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

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

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: BD Gogoi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 14/17 G.R. Case No. 3656/16

> > State of Assam

-Vs-

Sri Sanjay Murah

Charges: Under Section 6 POCSO Act.

Date of evidence on : 03-03-18, 03-04-18, 11-05-18 and 13-06-18.

Date of argument : 25-07-18. Date of Judgment : 08-08-18.

JUDGMENT

- 1) The prosecution's case in a narrow compass is that, on 2.12.16, when the 9 year old victim 'x' was while at home, her father SanjoyMurah(hereinafter the accused) committed rape on his own daughter 'x'. When Sanoy's wife learnt about the incident, he assaulted his wife and daughter and fled from the house. Sanjoy's wife had a discussion with the villagers and when Sanjoy returned home, he was apprehended by the local villagers.
- 2) An ejahar regarding this incident was lodged by Sanjoy's wife, Smti. Lakhi Mura with the Police at Tengakhat P.S which was registered as Tengakhat P.S Case No. 159/16, under Section 4 of the Protection of Children from Sexual Offence Act (POCSO Act in short). The Police recorded the statement of the victim and forwarded her to the Magistrate who recorded her statement. The victim was forwarded to

- the Medical Officer (M.O in short) for examination.
- 3) The I.O went to the place of occurrence(P.O in short), prepared the sketch map and recorded the statements of the witnesses. On finding prima facie materials, the I.O submitted charge sheet against the accused under Section 4 PCSO Act. On appearance of the accused, copies were furnished and a formal charge under Section 6 PCSO Act was framed and read over and explained to the accused. He abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduce the evidence of nine (9) witnesses including the medical officer (MO in short) and the IO.

Submissions:

5) The Learned P.P Smri. Runumi Devi and the Learned Addl. P.P Smti. Sahnaz Akhtar laid stress in their argument that this is an open and shut case. When a daughter is not safe in the hands of her father stringent punishment has to be inflicted on such a father. On the contrary, the learned defence counsel laid stress in his argument that, this case is fraught with discrepancies. There was a delay in the lodgment of the FIR, but this delay was not properly explained.

Points for Determination:

- 6) On the backdrop of the rival proponements urged at the bar, the following points are apposite for proper determination of the case.
 - i. Whether the accused committed penetrative sexual assault upon his own minor daughter 'x'?

Decision thereon and the Reasons for the Decision:

- 7) To decide the case in its proper perspective, it is necessary to delve into the evidence.
- 8) The evidence of the victim 'x' was recorded without administering any oath because she is held to be below 11 years of age. When she was asked about her age, she answered that she was 13 years of age, but after considering her stature and her age at the time of the occurrence, it was held that she was under 11 years of age and oath was not administered. However, her answers revealed that, she could give rational answers.
- 9) She stated that, the accused is her father. At the time of the incident, she was student of class IV. On that day, she was alone at home with her younger sister as her mother went out to collect paddy. At that time, she was carrying her younger sister. Then her father came and took away her sister and made her lie on the bed, gagged her and committed rape on her. He removed her panty and then removed his own clothes and committed rape on her. He made her lie on her bed and committed the bad act. When she screamed, he gagged her. Her evidence further proceeds that, when her mother retuned home, she informed her mother about the incident. When her mother confronted her father, he denied that he was complicit. After two days of confrontation, her father fled away from their house. Her mother informed the police and called her father over phone. She, along with her aunt Sima Mura accompanied her mother to the P.S. The Police

recorded her statement and forwarded her to the Magistrate who recorded her statement. Exhibit 1 is her statement and Exhibit 1(1) and 1(2) are her signatures. She was also forwarded to the doctor for medical examination.

- 10) In her cross-examination, she testified that, her father was addicted to alcohol. He goes out for work during the day time. Her younger sister was an infant of around 8/9 months. Her aunt and her grand-mother's residences are near her house. She informed about the incident to her mother on the next day. Her father was at home on the night of the incident. Her parents had a fight on the night of the incident.
- 11) The remaining part of her cross-examination is not noteworthy. Her evidence remains uncontradicted and uncontroverted, after extensive cross-examination by the defence. Her statement under Section 164 Cr.P.C is also consistent to her testimony in the court. At this stage, it is pertinent to mention that, the victim testified in her cross-examination and she has also mentioned in her statement under Section 164 Cr.P.C that, she informed her mother about the incident on the next day of the incident. This behaviour of the victim, does not cause a dent in the evidence because the accused appears to be a formidable character to the victim, because he is her father. It is obvious that the victim will be terrified of her father. Out of fear, she kept mum for a day. This cannot be considered as a discrepancy.
- 12) It is obvious that the victim will be terrified of her father. Moreover, her statement under Section 164 Cr.P.C vide Exhibit 1 reveals that, when

she informed her mother about the incident, the accused assaulted her. This evidence of the victim is supported and corroborated by the evidence of her mother Smti. LakhiMurah who testified as P.W.2 that, her daughter is 10 years of age. The incident took place about 3 months ago. On the day of the incident, she went out to collect paddy. Her victim daughter was with her younger sister at home. Her husband was at home at that time and he was consuming alcohol. On the day of the incident, at about 4.00 p.m she reached home and noticed that her entrance door was latched from inside. She called her daughter, but her daughter did not answer her calls and after some time her daughter came out wearing her leggings without her underwear. When she noticed that, her daughter was without her underwear, she confronted her daughter and then her daughter started crying. Her daughter did not answer as she was terrified. Then her husband started assaulting her because she confronted her daughter and her husband accosted and rebuked her for being suspicious on his relationship with his daughter. After assaulting her, her husband left. When her husband left, her daughter informed her that, he committed rape on her daughter and she was experiencing pain. Her daughter described that her husband removed her panty and committed rape on her and she was suffering from pain and suffocation. On the evening when her husband returned, she confronted him for committing rape on her daughter. Her husband was inebriated and he assaulted her and her daughter. After 3 days of the incident, she informed the

MahilaSamiti about the incident. The Mahila Samiti took the FIR to the Police Station, but could not lodge the same. On the third day, her husband was apprehended by the MahilaSamiti and the public and he was handed over to the Police and then she lodged the FIR. The MahilaSamiti wrote the FIR and she affixed her thumb impression. She took her daughter to the P.S and the Police recorded her statement. The Police forwarded her daughter to the Magistrate and also to the doctor for medical examination.

- 13) The evidence of P.W.2 corroborates and supports the evidence of her daughter. Both P.W.1 and P.W.2 submitted that, when P.W.1 was alone at home along with her younger sister, the accused committed rape on P.W.1 by removing her panty. Immediately after the incident P.W.2 reached home and she noticed that, the door was latched from inside and her daughter did not answers her calls. P.W.2 testified that, initially her daughter did not answer when she questioned her why she was without her underwear because her daughter was terrified of her husband. The cross-examination of P.W.1, her statement under Section 164 Cr.P.C and the evidence of P.W.2 clearly depicts that initially P.W.1 was mum about the incident, later P.W.1 informed P.W.2 about the incident.
- 14) It is clear that P.W.1 was terrified of her father and so she did not inform her mother about the incident immediately after the incident. The evidence of P.W.2 reveals that, when she confronted her husband on the next evening, he assaulted her and her daughter. The evidence

of P.W.1 also clearly reveals that, her mother confronted her father for two days. Their evidence also reveals the adamancy of the accused who assaulted them after he was confronted by PW-2. The delay in lodgment of the FIR has been explained by P.W.2 in her FIR. It is held that, the P.W.2 has satisfactorily explained the delay in lodgment of the FIR. It is a deplorable incident committed by her husband in her own house. Initially when her daughter did not disclose about the incident, P.W.2 repeatedly confronted her husband and finally the accused assaulted her and fled away. The evidence of P.W.1 clearly reveals that, her father fled away after two (2) days. P.W.2 then informed the Mahila Samiti who helped her with the process of lodgment of the FIR. The delay has been explained by P.W.2 through her evidence also.

15) P.W.2 was cross-examined in extenso. However, her evidence remains uncontradicted and uncontroverted. She has affirmed through her cross-examination that, initially her daughter informed her that, she was suffering from pain, but her daughter did not reveal why she was suffering from pain. Thus it has been affirmed through the cross-examination of P.W.2 that, P.W.1 informed her mother about the incident much latter. Through her cross-examination, P.W.2 has also explained the delay in lodgment of the FIR. She has testified in her cross-examination that, she informed the Mahila Samiti after two days of the incident and she met the second officer in the P.S when she went to lodge the FIR initially and the second officer advised her to go to the P.S on the next day. Thus, the delay has been satisfactorily

explained by P.W.2 through her evidence in chief and also through her cross-examination. Although P.W.2 was questioned by the defence regarding her omission to state certain statements before the I.O, yet this was not affirmed by the I.O. So, the question regarding such omission is not relevant and is not required to be discussed. It is thereby held without hesitation that the evidence of P.W.2 remains uncontradicted and uncontroverted.

- 16) The evidence of P.W.1 and P.W.2 is corroborated and supported by the evidence of Smti. Rupamoni Hazarika who testified as P.W.3 that, she got acquainted with the informant and the accused at the time of the incident which occurred more than a year ago. On the following morning of the incident, victim's mother, Lakhi Murah came to her house. She was accompanied by 2 more women from the village and she informed her that her husband committed rape on her daughter. They learnt that the accused was roaming freely and so with the help of the family members of the accused, they apprehended him, and handed him over to the Police. Before handing over the accused to the Police, she also met the victim girl and examined her private part which was swollen. The victim informed her that the accused committed rape on her. The family members of the victim were also present when she examined her private part. She also accompanied the victim and her mother to the P.S.
- 17) The evidence of P.W.3 depicts the latter part of the incident. She was examined extensively, but her evidence also remained uncontradicted,

on the cross-examination of the I.O. The learned defence counsel cross-examined P.W.2 and 3 regarding the addiction of the accused to alcohol, by projecting that the accused was addicted to alcohol. It was argued that a false case is foisted against the accused because he is addicted to alcohol and due to his addiction there used to be frequent disputes between informant and her husband. This theory does not commend acceptation.

- 18) A mother will never use her minor daughter to rope in her own father with such deplorable allegations. At this stage, it is also pertinent to divert the attention to the evidence of the M.O regarding the injuries sustained by the victim.
- 19) Dr. Nibetida Shyam testified as P.W.8 that, on 12.12.16, while working as GDMO she examined the victim 'x' in connection with this case and found the following:

On genital examination: Genital organs were healthy. Vulva is healthy. Hymen is intact. Vagina and cervix is healthy. Uterus not palpable per abdominally. Vaginal smears were taken from in and around the vagina the result of which does not show any spermatozoa.

- 20) On the basis of Physical examination, Radiological & Laboratory

 Investigation done on the victim X, the MO was of the opinion that
 - i. Her age is 9 to 10 years;
 - ii. Evidence of recent sexual intercourse not detected on her person;

- iii. Evidence of injury not detected on her private parts.
- 21)Ext. 3 is the Medico-legal Report wherein Ext. 3(1) to Ext. (3) are the signatures of the MO.
- 22)At this stage, it is pertinent to mention that, the learned defence counsel emphasised through his argument that the embellishments of the evidence by the P.W.3 is not supported by the evidence of the M.O. After examination of P.W.1, M.O did not detect any injuries on her private parts or any evidence of recent sexual intercourse. It has surfaced that there was a delay in the lodgement of the FIR and after delay in lodgement of the FIR, the victim was forwarded for medical examination which erased the evidence of sexual assault on the victim. Thus, the doctor failed to detect any evidence of sexual assault to the victim 'X'. The lack of evidence of sexual assault however does not thwart the clinching evidence garnered against the accused.
- 23)The P.W.3 examined the victim immediately after the incident and so she detected swelling on the private part of the victim. This evidence of P.W.2 cannot be rejected as embellishment. She is an independent witness and she cannot be held to be interested to rope in the accused with false accusations or embellishments. The evidence of P.W.1, 2 and 3 is corroborated and supported by the evidence of Bharti Mura who testified as P.W.4 that the accused is her neighbour and the victim 'x' is the accused person's daughter. The alleged incident took place on 12.12.16 and on the next day i.e. on 3.12.16, the informant came to her house and informed her that her husband committed rape on her

daughter 'x'. Then they informed about the matter to the Mahila Samiti and the victim narrated about the incident before members of the Mahila Samiti in her presence. On 4.12.16, the matter was informed to the Police. She also accompanied the Mahila Samiti and the victim to the P.S.

- 24)This witness has accurately mentioned the date of the incident. However, the date of lodgment of FIR is not similar because the FIR was lodged on 12.12.16. As the incident occurred in the year 2016, it is discernable that people tend to forget the exact date and time in accurate manner which occurred a few months or a few years back.
- 25)The naivette of the witnesses in remote areas is also to be considered. The evidence of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.8 is supported and corroborated by the evidence of Smti. Preronika Induar who testified as P.W.5 that the informant is the accused person's wife and the victim 'x' is his daughter. The incident occurred about 1 year 4 months ago. The date was 2nd or 4th. The victim's mother informed her that her husband committed rape on her daughter. On the 4th, at about 4.00 p.m, she went to the informant's house and the informant again narrated the incident. On the next day, the village women gathered in the informant's house and she also accompanied them. The women who were present, asked the victim about the incident and the victim informed them that her father committed rape on her and she was suffering from pain. Then she along with other women accompanied the victim and the informant to the P.S.

- 26)The evidence of this witness is also remained uncontradicted. The evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 is also supported and corroborated by the evidence of Sri Ranjit Mura who testified as P.W.7 that the accused is his neighbour and the victim is the accused person's daughter. The incident occurred about 6 months ago. When he returned home from work, the victim 'x' informed him that the accused committed misdeed with her. He also heard that the women gathered together after the incident. The evidence of this witness also remained uncontradicted and uncontroverted.
- 27) The evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.7 is also supported and fortified by the evidence of the I.O Sri Tapan Das who testified as P.W.9 that, on 12.12.16, he was posted at Tingkhong P.S as S.I. On that day, the O.C received an FIR from Smti. LakhiMurah and registered a Tingkhong P.S Case No. 159/16, under Section 4 PCSO Act and endorsed him with the investigation. Exhibit 2 is the FIR and Exhibit 2(1) is the signature of O.C Biswajyoti Sharma with which he is acquainted. He met the victim and informant along with seven villagers who brought accused person to the P.S. He arrested the accused and forwarded him to judicial custody. He also recorded the statements of the victim, informant and the witnesses who appeared in the P.S. He forwarded the victim for her medical examination. He forwarded her to the Magistrate for recording her statement. He prepared the sketch map of the P.O Exhibit 4, wherein Exhibit 4(1) is his signature. He collected the medico legal report of the victim. After

completion of investigation he handed over the C.D to the O.C who submitted charge-sheet against the accused under Section 4 PCSO Act. Exhibit 5 is the charge-sheet and Exhibit 5(1) is the signature of O.C Srimanta Kumar Bharali with which he is acquitted.

- 28)The cross-examination of P.W.9 reveals that, not a single witness except Smti. Rupamoni Hazarika was contradicted on one statement. The I.O has affirmed that P.W.3 Smti. Rupamoni Hazarika omitted to state under Section 161 Cr.P.C that she has examined the private parts of the victim.
- 29)This is a minor contradiction which can be safely brushed aside.

 Recapitulating the entire evidence, it is thereby held that the accused is complicit. The evidence of all the witnesses remained uncontradicted. The evidence of the victim 'x' inspires confidence.

 Relying on the clinching evidence of all the witnesses supported by the evidence of Medical Officer, it is thereby held that, the prosecution could prove beyond a reasonable doubt that the accused committed penetrative sexual assault on his own daughter and he is liable under Section 5(n) of the PCSO Act, to be penalised under Section 6 PCSO Act. I have heard the accused on the question of sentence.
- 30)The conduct of the accused after the incident is also relevant as per Section 8 of the Indian Evidence Act, 1872 (the Evidence Act in short). It is in the evidence of PWs-1 and 2 that the accused fled after the incident. A case under the POCSO Act enjoins presumption under Section 29 of the Act which formulates that-

- 29. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed the offence, unless the contrary is proved."
- 21) According to the Explanation under Section 30 of the Act, 'Culpable Mental State' includes intention, motive, knowledge of the fact of the belief in or reason to believe a fact. The evidence of PW-1 depicts that the intention of the accused was clear. While she was holding her baby sibling, the accused came and removed the child from her clasp and made her lie on the bed and sexually assaulted her. The evidence of PW-2 depicts that the door was latched from inside and she kept on knocking at the door and the victim came out without her underwear and she was attired in her leggings sans underwear.
- 22) It will be a travesty of justice if the accused is not brought to book. There is clinching and uncontradicted evidence. The prosecution could prove this case beyond a reasonable doubt against the accused person.
- 23) I have heard the accused on the question of sentence.
- 24) The accused deserves stringent punishment. When a child is not safe in the hands of her father, an exemplary and stringent punishment is inevitable.

 Deterrence is also required to send a message to the society at large. The evidence was impeccable.

SENTENCE:

25) The accused Sri Sanjay Murah is convicted under Section 6 POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 10 (ten) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) only and in default

of payment of fine, to undergo RI for 1 (one) month. The period of detention

of the accused during investigation and trial is set off with his custodial

sentence.

26) Furnish free copies of judgment to the accused and to the District Magistrate.

27) 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 8th day of

August, 2018.

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. 14/17

List of witnesses for prosecution:

- 1. PW-1 The victim 'X';
- 2. PW-2 Smti. Lakhi Murah;
- 3. PW-3 Smti. Rupamoni Hazarika;
- 4. PW-4 Smti. Bharati Murah;
- 5. PW-5 Smti. Preronika Indua;
- 6. PW-6 Smti. Sima Murah;
- 7. PW-7 Sri Ranjit Murah;
- 8. PW-8 Dr. Nibedita Shyam; and
- 9. PW-9 SI Tapan Das.

List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Sketch-Map; and
- 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