

IN THE COURT OF THE SPECIAL JUDGE :::::::::

CHIRANG, KAJALGAON.

Special (P) Case No. 41(RKT)/2018 U/S 8 of POCSO Act.

State of Assam

Vs.

Sri Gautam Talukdar

.....Accused

PRESENT:

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri N.I. Siddique, Ld. Advocate

Date of evidence

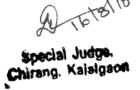
: 31.07.18, 01.08.18, 02.08.18

Date of Argument

: 16.08.2018

Date of Judgment

: 16.08.2018



JUDGMENT

1. The prosecution case in brief is that on 26.03.2018, the informant Smt. Kamala Narzary lodged an FIR before the I/C, Bengtol Police Out Post alleging that on 24.03.2018 at about 10.30 p.m., while Miss 'X' (name is withheld), the minor daughter of the informant was returning from the Bashanti Puja held at Durgapur and coming towards the house of her sister Bharati Islary, on the way, the accused Gautam Talukdar grabbed her and took her to unseen place and molested her and tried to commit rape upon her. It is alleged that though the victim tried to raise hue and cry, but she could not do so and after few minute, a group of persons reached the spot and saved her.

- 2. After the receipt of the FIR, the I/C, Bengtol Police Out Post made Bengtol O.P. GDE No. 696 dtd. 26.03.18, the I/C himself took up the investigation of the case and forwarded the FIR to the O/C, Runikhata Police Station for registering a case. The O/C, Runikhata P.S. accordingly registered a case being numbered as Runikhata P.S. Case No. 14/2018 U/S 8 of POCSO Act. Accordingly, the I.O. arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C and after completion of investigation, submitted charge-sheet against the accused person, namely, Gautam Talukdar U/S 8 of POCSO Act.
- 3. After receiving charge-sheet, copies of relevant documents were furnished to the accused person. Accused person was produced before the court from jail. On perusal of entire materials on record and hearing both sides on point of consideration of charge and after having found a prima facie case, formal charge was framed U/S 8 of POCSO Act against accused Gautam Talukdar. Charge was read over and explained to the accused person to which he denied to plead guilty.
- 4. In support of the case prosecution side examined as many as 8 (eight) witnesses including the I.O. and M.O.

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Following witnesses were examined:-

- (1) Victim Miss X (name is withheld) as PW 1
- (2) Smt. Kamala Narzary as PW 2
- (3) Smt. Bishmita Boro as PW 3
- (4) Sri Paban Dey as PW 4
- (5) Dr. Meena Hazarika (M.O.) as PW 5
- (6) Sri Swmdwn Owary as PW 6
- (7) Sri Sushil Islary as PW 7
- (8) SI Lakshman Kumar Das (I.O.) as PW 8

- 5. Medical report was exhibited as Ext.1. Radiological report was exhibited as Ext.2. FIR was exhibited as Ext.3. Sketch map was exhibited as Ext.4 and charge-sheet was exhibited as Ext.5.
- 6. Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.

8. **POINT FOR CONSIDERATION:**-

For the offence U/S 8 of POCSO Act

1. Whether on 24.03.2018, at about 10.30 p.m., at Durgapur under Runikhata P.S., the accused committed sexual assault on Miss 'X' (name is withheld), minor daughter of the informant?

DISCUSSION, DECISION AND REASONS THEREFOR:

- 9. Now, I want to scrutinize the prosecution evidence on record to prove the case U/S 8 of POCSO Act.
- 10. It was alleged in the FIR that when victim was returning from Bashanti Puja, on the way, an unknown person hugged her from backside and he touched her breast and her private parts. In the meantime, some persons came to the spot. As a result, the person failed to perform any other illicit act.
- 11. The victim was examined as PW 1. She stated her age as 18 years. According to victim, she was reading up to Class IV. She deposed that occurrence took place at night at about 10/10.30 p.m. At that time she was returning from Bashanti Puja. She deposed that she did not know the accused person at the time of occurrence. When she was returning, the accused hugged her and gagged and pulled her to nearby jungle, surrounded by bamboo groves. He touched her breast and private parts. He also tried to commit sexual intercourse but then two persons came to the spot. After that, she fled away. She immediately reached her home but did not report the matter to anybody. Later on, she reported her related sister Bharati. The victim further deposed that at that time, she was residing in the house of



Bharati as maid. She went to enjoy the 'Puja' along with own sister of Bharati but she returned alone. The sister of Bharati reported the matter to her mother. When her mother came to the house of Bharati, then victim told her about the incident. She stated that at the time of investigation, she was taken to the Court for recording her statement. She gave statement before the police and Magistrate. During the cross-examination, it is found that when she and accused were proceeding to nearby field, two persons followed them. They came to the spot with help of torch light and one of them gave a slap to the accused. It is revealed from the cross-examination of PW 1 that the person who gave slap to the accused was nothing but his own brother. It is also revealed that accused was often seen by the PW 1 prior to the incident. She knew that accused belonged to Rajbongshi community. She further knew that accused was unemployed. The PW 1 stated that as tutored by her mother, she told before police that at the time of occurrence, her age was 14 years. She further deposed that actually she did not visit any school but as her mother told that she was reading up to Class IV, therefore, she stated before this Court that she was reading up to Class IV. According to P.W.1 at the time of investigation, she gave statement before the Magistrate as tutored by her mother and she gave statement before the police as tutored by members of ABSU. She further deposed that this case was lodged according to advice of the members of ABSU organization.

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that victim knew the accused prior to the incident and she went with the accused but when other persons came to the spot, she fled away. She did not report anything immediately after the incident to the family members of Bharati in whose home she was residing. She did not make any complaint against the accused to the persons who were following them and caught them within the jungle surrounded by bamboo groves. Age was also not ascertained by the victim because she had no knowledge about her own age. As tutored by her mother and ABSU, she stated different statements before different authority. I have given judicial notice to the statement of the victim recorded U/S 164 Cr.P.C in which she stated that she was returning from village along with some other women. This fact was not stated by her before this Court.

- 13. PW 2 is the mother of the victim. She was informed about the incident by the family members of Bharati Islary in whose house victim was residing as maid at that time. She came to the house of Bharati and on the way, she heard from the ABSU members that accused tried to commit sexual intercourse with her daughter. She deposed that after that she met her daughter and she also reported same facts. On the other hand, two ABSU members were examined as PW 6 and PW 7. They deposed that they heard about the incident from the PW 2. Learned defence counsel, during the crossexamination of PW 2, pointed out that she did not state before the I.O. that she heard about the incident from his daughter. The I.O. was examined as PW 8. He confirmed that PW 2 did not state before him that she had heard from the victim directly about the alleged incident.
- 14. PW 3 is a woman police constable, who translated the version of PW 2 to the police officer because PW 2 stated the facts in Bodo language and police officer did not know the language.
- PW 4 is the material witness Sri Paban Dey. He witnessed the occurrence. According to PW 4, at the time of occurrence, age of the victim was about 17 years. Victim was residing in the house of one Bharati Islary as maid. House of accused is situated within the range of half kilometer from the house of Bharati Islary. He deposed that on the date of occurrence, Bashanti Puja was going on at Durgapur area. He also present at 'Puja' fair. At about 10.00 p.m., he along with his mother, wife and sister-in-law were returning to their home. On the way, he noticed that the accused called the victim, the latter (PW1), also followed the accused. Then PW 4 informed the brother of the accused, namely, Sesha Talukdar and one Samit Sarkar and some other persons. He immediately went to his home and took a torchlight. All of them followed the accused and victim. Both accused and victim were making conversation near bamboo groves. They immediately apprehended the accused and handed over him to his brother. In the meantime, victim fled away from the place of occurrence. He further deposed that after the incident, Bharati Islary drove away the victim from her house. According to PW 4, when he reached the spot he saw that accused and victim were standing separately. Nothing was seen by him as alleged by the victim. During the cross-

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examination, this witness clearly stated that when accused and victim were moving to the field, they were also following them. According to PW 4, brother of the accused gave a slap to him. At that moment, victim fled away. She did not state anything to them. This witness further deposed that due to advice of ABSU members, mother of the victim lodged the FIR. Actually nothing was happened as alleged in the FIR. He further admitted that there might be some relationship between the accused and victim.

- 16. PW 5 is the Medical Officer, who examined the victim. According to the Medical Officer, the age of the victim was above 15 years but below 18 years.
- 17. PW 8 is the Investigating Officer, who deposed that on 26.03.18 he was serving as I/C, Bengtol O.P. On that day, informant Kamala Narzary, the PW 2 lodged an FIR. After receiving the FIR, he sent the same to Runikhata P.S. and he started investigation by making GD Entry No. 696 dtd. 26.03.18. He examined the victim and informant. As the victim and informant could not speak in Assamese language, hence, WPC Bishmita Boro translated their statements from Boro language to Assamese language as interpreter. He collected the medical examination report of the victim. He sent the victim to the Court for recording her statement U/S 164 Cr.P.C. He also recorded statement of other witnesses and drew sketch map. During the crossexamination, PW 8 stated that the place of occurrence was not identified by the victim. One Anima Basumatary and Johnpal Basumatary identified the P.O. those persons did not witness the occurrence. According to PW 8, Paban Dey, PW 4 witnessed the occurrence. He did not examine other boys who accompanied Paban and apprehended the accused and victim. He confirmed during his cross examination that PW 1 did not state before him that accused had attempted to commit sexual intercourse with her.

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After going through the entire evidence on record, I have found that victim is not a reliable witness. Her age was also not ascertained. It is alleged that accused touched her breast and her private part but this fact was not supported by eyewitness, PW 4. According to eye witness PW 4, both the accused and victim were making conversation and they were standing

separately. According to PW 1, case was lodged as per advice of the members of the ABSU. P.W.4 also supported this fact. PW 2 stated that he heard about the incident from the members of ABSU i.e. PW 6 and PW 7 but both the PW 6 and PW 7 stated that they first heard about the incident from the PW 2, the informant. It is also found from the evidence of PW 1 that she was tutored by her mother, PW 6 and PW 7. It is also found from her evidence that she knew the accused prior to the incident. According to PW 4, victim followed the accused and did not make any hue and cry. It is also admitted by PW 1 that she immediately did not inform about the misdeed allegedly committed by accused to the persons who caught the accused and the family members of Bharati Islary. PW 4 stated that after the incident victim was driven away from the house of Bharati Islary. This conduct of Bharati Islary revealed that the victim with consent went to the place of occurrence along with the accused. When brother of the accused and PW 4 and other persons caught them, then she immediately fled away. So, her allegation is doubtful. According to her own statement, FIR was lodged as per advice of ABSU members. According to eyewitness nothing was happened and this case was lodged according to advice of the ABSU. The prosecution failed to establish the case as narrated in the FIR. The victim is found as wholly unreliable witness. Informant did not know about the incident. According to her, she was informed by the members of ABSU. The victim stated different story before different authority. In her initial statement before Magistrate, she stated that she was returning along with some other women. In her later deposition, she deposed that she was returning alone. She also gave false statement regarding her age as well as her educational qualification. She stated that as her mother advised for which she deposed before this Court that she was reading up to Class IV. Her age was also stated as tutored by her mother without any basis. The medical evidence was scanty regarding the actual age of the victim. According to medical evidence, her age was above 15 years but below 18 years. If I believe the statement of independent witness, PW 4, who followed the accused and victim from the very beginning, then I have found that the story narrated by PW 1 is nothing but concocted one. So, point mentioned above is remained as not proved. Accused is not found guilty.

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ORDER

- 19. Prosecution failed to prove the case U/S 8 of POCSO Act against accused Gautam Talukdar. Accused is acquitted and set at liberty. Accused is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. It is found from the record that accused is in jail. Therefore, jail authority is directed to release the accused forthwith if he is not required in any other case, subject to submission of bail bond.
- 20. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.
- 21. Given under my sign and seal of this Court on this the 16th day of August, 2018, at Kajalgaon, Chirang.

Dictated and corrected by me,

(D.J. Mahanta)

APPENDIX

Prosecution witness:

- PW 1 Victim Miss X (name is withheld)
- PW 2 Smt. Kamala Narzary
- PW 3 Smt. Bishmita Boro
- PW 4 Sri Paban Dey
- PW 5 Dr. Meena Hazarika (M.O.)
- PW 6 Sri Swmdwn Owary
- PW 7 Sri Sushil Islary
- PW 8 SI Lakshman Kumar Das (I.O.)

Prosecution Exhibit:

- Ext-1 Medical report
- Ext-2 Radiological report
- Ext-3 FIR
- Ext-4 Sketch map
- Ext-5 Charge-sheet

Material Exhibit (Prosecution):

Defence Witness:

Nil

Defence Exhibit:

Nil

(D.J. Mahanta)
Special Judge,
Special reliance
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