

IN THE COURT OF THE SESSIONS JUDGE ::::::: CHIRANG, KAJALGAON.

Sessions Case No. 210(Basu)/2015

U/S 376(1) IPC R/W Section 8 of POCSO Act

State of Assam Vs. Sri Prasenjit Ghosh

.....Accused

PRESENT:

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

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri S. Alam, Ld. Advocate

Date of evidence

: 21.03.17, 15.06.18, 21.07.18

Date of Argument

: 21.07.2018

Date of Judgment

: 21.07.2018

JUDGMENT AND ORDER

- The prosecution case in brief is that on 16.12.2013, the 1. informant Dinesh Barman lodged an FIR before Basugaon P.S. alleging that on 15.12.2013, at about 6.00 PM, accused Prasenjit Ghosh called Miss 'X' (name is withheld), 14 years old daughter of the informant from her house through mobile phone and committed rape on her removing her wearing apparels in a nearby jungle. On her raising hue and cry, neighboring people rushed to the spot and caught the accused and handed over him to Basugaon P.S.
- 2. The matter was informed to the O/C, Basugaon P.S. for registering a case. The O/C, Basugaon P.S. accordingly registered a case being Basugaon P.S. Case No. 139/13 U/S 376(2)(i) IPC and entrusted S.I. Omar Faruk to investigate the case. Accordingly, the Investigating Officer

Sessions Judge, Chirang, Kajalgaon 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 CrPC, seized wearing apparel of the victim, sent the same to FSL, collected the medical report and FSL report and after completion of investigation, S.I. Alakesh Karmakar submitted charge-sheet against the accused Prasenjit Ghosh U/S U/S 376(2)(i) IPC R/W Section 8 of POCSO Act. Later on, accused person was released on bail. After receiving charge sheet, CJM, Kokrajhar transferred the case to the Court of learned CJM, Chirang. On receipt of the case record, learned CJM, Chirang transferred the case to the Court of learned JMFC, Chirang for disposal. Thereafter, learned JMFC, Chirang furnished the copies of relevant documents to the accused person and committed the case to this Court as section 376(2)(i) IPC R/W Section 8 of POCSO Act is triable exclusively by the Court of Session.

- 3. The accused appeared before this Court. After hearing both sides on point of consideration of charge and perusing the materials on record, my learned predecessor framed formal charge U/S 376(1) IPC R/W Section 8 of POCSO Act against the accused person. 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 6 (six) witnesses.
- Following witnesses are examined:-
 - (1) Victim as PW 1
 - (2) Sri Nikunja Ray as PW 2
 - (3) Sri Bikram Ray as PW 3
 - (4) Sri Surojit Ray as PW 4
 - (5) Sri Tapan Dutta as PW 5
 - (6) Sri Dinesh Barman as PW 6
- 6. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.1 and FIR was exhibited as Ext.(2).
- 7. Defence plea is of total denial. Defence adduced no evidence.

Sessions Judge, Chirang, Kajalgaon Heard argument from both sides.

Now point for consideration:-

For the offence U/S 376(1) of IPC R/W Section 8 of POCSO Act

1. Whether on 15.12.2013, at about 6.00 P.M., at Basugaon Goglapara, the accused committed rape on Miss 'X' (name is withheld), a minor girl aged below 18 years?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 10. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned point.
- PW 1 is the victim of this case. She deposed that occurrence 11. took place about 3/4 years ago from the date of her deposition. On that day at about 4.30/5.00 PM, her father was creating nuisance at home by consuming alcohol and on being annoyed, she came out from her home and came to Basugaon railway station along with her friend. While they were sitting at the railway station, accused Prasenjit came there and asked her where she had to go. Then she replied that she did not want to go anywhere but she would sit there. The accused then told her that he would lead her to her house. Accordingly, she was coming with the accused towards her home by boarding in his bicycle. After going some distance, she asked the accused to stop his bicycle and told him not to accompany her further. The accused stopped his bicycle and she got down therefrom and proceeded towards her house. After crossing a little distance, she saw that the accused was again standing on my way and he gave a proposal to marry her saying that he loved her. At that moment, four boys came there and started to assault Prasenjit and with the help of local people, he was caught and he was handed over to police. During her cross-examination, she stated that she had good relation with the accused Prasenjit and public brought her along with Prasenjit to thte Police Station at 10.30/11.00 PM at night and she was detained there for the whole night. She was detained at the police station for three days and after three days she was taken to the Court. As tutored by police personnel, she

Sessions Judge,

gave her statement U/S $164\ \text{CrPC}$ before the Magistrate. Prasenjit did nothing with her.

- 12. PW 2 deposed that on 16.12.13, while he was in a tea stall near the Basugaon Police Station, the O/C, Basugaon P.S. called him to the police station. In the Police Station, he found the informant and the informant told him about the incident. Then he wrote the FIR as stated by the informant. He had no direct knowledge about the incident.
- 13. PW 3 deposed that occurrence took place in the month of December, 2013. On that day, at about 7 p.m., he was returning from a marriage party along with Anupam, Chipon and Sunu. They were proceeding to the house of Sunu @ Surojit which is situated in village Bijoygaon. When they entered the village, they noticed that accused person was committing sexual intercourse with a girl near the road under the grove of bamboo. They caught the accused along with the girl and handed over the accused along with the girl to the villagers. According to this witness, the age of the girl might be 17/18 years. During cross-examination, he stated that there was darkness and they found the accused and the girl when they were standing within the bamboo group. On suspicion, they handed over the accused along with the girl.

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- 14. PW 4 also stated same facts as stated by PW 3. PW 5 only heard from the villagers that there was an incident in between the accused and victim. He has no direct knowledge about the incident.
- 15. PW 6 is the informant of this case and father of the victim. He deposed that due to pressure from the villagers and police, he put his thumb impression upon the ejahar which was written by someone else. He asked her daughter about the incident but she did not state anything. He has no allegation against the accused. Victim was married to another boy. Due to ill advice of the villagers, he lodged the FIR.
- 16. After going through the entire evidence given by material witnesses, I have found that though the PW 3 and PW 4 stated that at the time of occurrence, at about 7 p.m., they found the accused while he was

committing sexual intercourse with a girl near the road under the bamboo grove but during his cross-examination, PW 3 clearly stated that at the time of occurrence, there was darkness and they found the accused and the girl when they were standing within the bamboo grove and on suspicion, they handed over the accused along with the girl. But from the evidence of victim herself, it is revealed that on the date of occurrence as her father was creating nuisance at home after consuming alcohol, so, she came out from her home and went to Basugaon Railway Station along with a friend. They stayed there till the dark. While they were sitting at the station, the accused came there and told the victim that he would lead her to her home. Thereafter, while she was returning towards her home along with the accused, on the way, the accused proposed her to marry saying that he loved her but she did not give any reply at that moment. At that time, four boys appeared there, assaulted the accused Prasenjit, caught him and handed over to police. The victim herself did not make any whisper regarding sexual intercourse committed by accused Prasenjit upon her. From the evidence of PW 6, the informant and father of the victim, it is revealed that due to pressure from the villagers and police, he put his thumb impression upon the ejahar which was written by someone else. The victim did state nothing to him. He has no any allegation against the accused. He lodged the FIR due to ill advice of the villagers. So, commission of sexual intercourse upon the victim by the accused is not proved beyond all reasonable doubt. Prosecution failed to establish the charge either U/S 376 (1) IPC or U/S 8 of POCSO Act. Both the points mentioned above are remained as not proved. Accused is not found guilty.

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ORDER

- 17. Prosecution failed to prove the case U/S 376(1) IPC R/W Section 8 of POCSO Act against accused Prasenjit Ghosh. Accused is acquitted and set at liberty. He 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. Till then, he is allowed to remain in previous bail.
- 18. A copy of this Judgment and Order shall be given to the District Magistrate, Chirang for information.

19. Given under my sign and seal of this Court on this the 21^{st} day of July, 2018, at Kajalgaon, Chirang.

Dibyej yoh Mulauk (D.J. Mahanta)² (17/18 Sessions Judge, Sess<u>chirand</u>udge, Chirang, Kajalgaon

Dictated and corrected by me,

(D.J. Mahanta) Sessions Judge, Sess<u>chnandudge,</u> Chirang, Kajalgaon

<u>APPENDIX</u>

Prosecution witness:

PW 1 – Victim

PW 2 – Sri Nikunja Ray

PW 3 – Sri Bikram Ray

PW 4 – Sri Surojit Ray

PW 5 - Sri Tapan Dutta

PW 6 - Sri Dinesh Barman

Exhibit (Prosecution):

Ext-1 Statement of the victim U/S 164 Cr.P.C.

Ext-2 FIR

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta) Sessions Judge, Sess<u>chirang</u>udge,

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