CAUSE TITLE POCSO Case No. 26/16

Informant: Smti. X (the alleged victim).

Accused: Sri Lokeswar Kurmi,

S/o- Sri Kameswar Kurmi, R/o- Gerekoni Gaon, PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. UK Saha, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 26/16 G.R. Case No. 3274/15

> > State of Assam

-Vs-

Sri Lokeswar Kurmi

Charges: Under Sections 8 of the POCSO Act, read with Section 354 of the IPC.

Date of evidence on : 28-09-16, 05-01-17, 17-02-17 & 21-03-17.

Date of argument : 03-06-17. Date of Judgment : 07-07-17.

JUDGMENT

- 1) The prosecution case that stems from the FIR is that on 06-11-15, while the victim X was cutting hay, Sri Lakheswar Kurmi (hereinafter the accused) outraged the modesty of the victim and caught hold of her hand and kissed her. He also bit her on her tummy and threatened her not to divulge about the incident to anybody. An ejahar regarding this incident was lodged by the victim with the Rajgarh Outpost. A GDE 460 dtd. 19-11-15 was registered and the ejahar was forwarded to the Tingkhong Police Station. The ejahar was registered as Tingkhong PS Case No. 134/15 u/S 354-A of the Indian Penal Code (IPC in short), r/w Section 8 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act in short). ASI Arjun Singh was entrusted with the preliminary investigation and SI Bhaskar Jyoti Phukan completed the investigation. Charge-Sheet was laid against the accused under section 354-A IPC read with section 8 of the POCSO Act.
- 2) On appearance of the accused, copies were furnished and after hearing both the sides, charge under section 8 of the POCSO Act, read with section 354 IPC was framed and read over and explained to the accused. The accused person abjured his guilt and claimed innocence.
- 3) To substantiate the stance, the prosecution adduced the evidence of 8 witnesses and the defence cross-examined the witnesses in extenso to refute

the charges.

SUBMISSIONS

- 4) The learned Public Prosecutor Smti. Runumi Devi submitted that this case has been proved beyond reasonable doubt and adequate punishment ought to be inflicted upon the accused. The learned defence counsel submitted that this is a false case foisted against the accused. This case is fraught with discrepancies and replete with contradictions. It is submitted that there was delay in lodgment of the FIR. The evidence reveals that complainant was not willing to lodge the ejahar. An acrimonious relationship was prevailing between both the parties. The remaining part of the argument will be discussed at the appropriate stage.
- 5) To decide the case in its right perspective, the following points are apposite for determination.
 - 1. Whether the accused committed sexual assault upon the victim?
 - 2. Whether the accused used criminal force upon the victim intending to outrage her modesty by such criminal force?

DECISION THEREON AND THE REASONS FOR THE DECISION

6) The complainant X claims to be the victim. She testified that as PW-1 that the accused is known to her. The incident took place on 06-11-15. On that day, at about 4:00 pm, she went along with the accused to the nearby paddy field to collect hay. Then the accused asked her to bend down to tie the hay, which they had collected. When she bent down to tie the hay, the accused groped her from the front side and kissed her and pressed her breasts and bit her tummy. She shoved him away and the accused repented that he had made a mistake and he will never repeat such mistake in the future. The accused asked her not to disclose about the incident to anybody. Then she returned to her house and informed her mother about the incident. Her mother went to the accused person's house and informed his wife about the incident. Her mother also informed their neighbours Rita and Ranjan Chetry about the incident. After the incident, the accused person's family members came to their house and pleaded and apologized to forgive him and so they did not lodge the ejahar. Later, the accused person spread rumours against her (X) that she was at fault. When the victim learnt about the rumours spread against her, she lodged the ejahar which was written by a villager named Bipul Kalita. The ejaher was lodged on 19-11-15 with the Rajgarh Outpost. Ext. 1 is the ejahar and Ext. 1(1) is her signature. She was forwarded to the Magistrate for recording her statement. Ext. 2 is her statement and Ext. 2(1) and Ext. 2(2) are her signatures. She was also forwarded to the Rajgarh PHC. Her date of birth is 24-04-1999 and also she claims to be 16 years of age.

- 7) In her cross examination, she stated that she addresses the accused as her elder brother, because he is her neighbour. The paddy field is not within the vicinity of her house. The accused is a frequent visitor to her house. Her father borrowed Rs. 20,000/- from the accused. She has admitted in her cross examination that there is no explanation for the delay in the lodgment of the FIR. Her reputation has been marred by the accused who spread rumours about her character. She further stated that Bipul Kalita, Meghnath Goswami and others advised her to lodge the FIR. The remaining part of her cross examination is regarding her omission of certain statements before the police under section 161 CrPC. The evidence of PW-1 is supported by the evidence of her mother. Smti. Alu Das stated as PW-2 that the accused is her neighbour and her daughter is 16 years of age. On the day of the incident, at about 4:00 pm, while she was in her house, she saw her daughter 'X' who returned from the paddy field, was seated on the courtyard and was weeping.
- 8) When she asked her daughter the reason why she was weeping, her daughter informed her that when she went to collect straw along with the accused, he touched her and kissed her and also bit her tummy. Then she went to the accused person's house and brought him to her house and confronted him about the incident. The accused denied about the incident. On the same day, at about 7 P.M the accused came to their house and apologized and pleaded with them not to disclose about the incident. So no ejahar was lodged against the accused. But the accused started spreading rumours about the moral character of her daughter. So she informed the VDP members and her daughter lodged the ejahar with the Rajgarh Outpost.
- 9) In her cross examination, she testified that they had no intention to lodge any case against the accused. The paddy field is within the vicinity of their house. She admitted that her husband borrowed Rs. 20,000/- from the accused. She denied the suggestion of the defence that to avoid payment of

- Rs. 20,000/-, a false case was foisted against the accused.
- 10) Although the evidence of PW-2 corroborates the evidence of PW-1, yet it can be deduced that both PW-1 & 2 were not willing to lodge this case against the accused. An acrimonious relationship between the accused and the complainant can also be deduced from the evidence. It has been elicited from the cross examination of PW-1 & 2 that the ejahar was lodged after the accused spread rumour against the victim and to avenge this, a case was lodged against the accused. Initially, when the accused begged and pleaded with the victim not to lodge any case against him, no action was taken against the accused nor any FIR was lodged. There is admitted delay of about 13 days which casts a shadow of doubt over the veracity of the victim's evidence. There appears to be a motive also to launch a false case against the accused, because the victim's father borrowed Rs. 20,000/- from the accused and this has been admitted by both PW-1 & 2.
- 11) Let us find out whether the evidence of the other witnesses supports the prosecution case.
- 12) Smti. Junmoni Gogoi testified as PW-3 that the incident took place in the year 2015 and at that time, she was the secretary of the VDP of Kenduguri Village. After 10/2 days, the victim's mother Smti. Alu Das went her house and informed her that the accused outraged her daughter's modesty when both her daughter and the accused went to collect straw from the paddy field. Then she asked X about the incident and X informed her that when she went with the accused to collect straw, accused kissed her and bit her on her abdomen and touched her breasts. She advised them to inform the police about the incident and she accompanied them to the outpost.
- 13) In her cross examination, she admitted that she did not state before the police that Smti. Alu Das came to her house and informed her that the accused kissed x and touched her breasts and bit on her tummy. She also did not state before the police that the victim also informed her about the incident. Thus, the evidence of PW-3 is an embellishment, because she herself admitted regarding her omission under section 161 CrPC. Her evidence is not found to be reliable.
- 14) Smti. Rupamoni Gogoi testified as PW-4 that the accused is not known to her.

 About a year ago, one day, the victim's mother called her and informed her about the incident which took place 10 days earlier. The victim's mother

informed her that when the victim went to the paddy field with the accused, the accused indulged in eve teasing with the victim. This evidence of PW-4 is also not held to be reliable. It is clear from her evidence that the victim's mother went ahead and informed her about an incident which took place 10 days earlier. This is not the way to collect evidence. The enthusiasm of the complainant and her daughter is discernible, because the complainant and her daughter went and informed PW-3 & 4 about a incident which took place more than a week earlier.

- 15) The evidence of PW-5 & 7 also can be considered on the same footing.
- 16) Smti. Mitali Konch Baruah testified as PW-5 that about a year back, she was invited by the victim's mother for a meeting as she was the president of the VDP. She and Rupamoni (PW-4) attended the meeting which was held in the complainant's house. In the meeting, the complainant narrated the incident that while the victim went to the paddy field, the accused outraged the victim's modesty and held her hand. Thereafter, Smti. Alu Das went to the police station to lodge the ejahar and they accompanied Smti. Alu Das to the police station.
- 17) Sri Meghnath Goswami testified as PW-7 that on the evening of the incident, the victim went to his house and informed him that when she went to the paddy field to collect hay, the accused pulled her hand and tried to outrage her modesty. She somehow managed to escape from the clutches of the accused person. Then he (PW-7) asked the victim to inform the police and he accompanied the victim to the police station.
- 18) In his cross examination, he testified that the victim informed him about the incident on 19-11-15, i.e., after 7 days of the incident. Moreover, this contradiction has been affirmed by the IO. The IO testified as PW-8 that Meghnath Goswami did not state before him that on the evening of the incident, the victim X went to his house and informed him that while she was collecting hay from the paddy field, the accused pull her and tried to outrage her modesty and she somehow escaped from the clutches of the accused.
- 19) If we analyse the evidence of PW-5 & 7, it is clear that both PW-5 & 7 accompanied the victim to the police station. PW-7 aggravated and embellished his testimony which is contradictory to his statement u/S 161 CrPC. The incident took place on 06-11-15 and the ejahar was lodged on 19-11-15. Smti. Alu Das is the person who went from door to door informing

about the molestation of her daughter. She woke up from her slumber after 13 days. Besides the newly introduced reason of delay in lodgment of the ejahar, there appears to be no other reason of delay of 13 days. Moreover, the delay in lodgment of the ejahar was introduced anew at the time of testifying in the Court. The ejahar does not contain the reason of delay in the lodgment of the ejahar. It appears that PW-1 & 2 are responsible for tarnishing the reputation of the accused and not vice versa. There are more contradictions which will be discussed at the latter part of the decision.

- 20) Sri Rajib Saikia testified as PW-6 that on 19-11-15, while working as medical officer at Rajgarh CHC, he examined the victim X and did not find any injury on the victim. Ext. 3 is the Medico-legal Report and Ext. 3(1) is his signature.
- 21) It is germane to mention in this stage that no bite marks were detected by the doctor on the victim's abdomen.
- 22) The IO ASI Arjun Singh testified as PW-8 that on 19-11-15, the in charge of the Rajgarh Outpost received an ejahar from 'X' and he registered a GDE No. 460/15 and forwarded the ejahar to the Tingkhong police station. The OC of the Tingkhong police station registered a case being Tingkhong PS Case No. 134/15 u/S 354-A IPC, read with Section 8 of the POCSO Act and entrusted him with the preliminary investigation and the completion of Investigation was entrusted to SI Bhaskar Jyoti Phukan. Ext. 1 is the ejahar and Ext. 1(2) is the signature of SI Bhaskar Jyoti Phukan, the In-charge of the Rajgarh Outpost and Ext. 1(3) is the signature of Prasanta Bejbaruah, the OC of Tingkhong Police station. Ext. 4 is the printed proforma of the FIR and Ext. 4(1) is the signature of the OC of Tingkhong Police Station. After the GDE, he took up the preliminary investigation as directed. He met the victim and the other witnesses in the outpost and recorded their statements. Thereafter he went to the place of occurrence and prepared the sketch map. Ext. 5 is the Sketch Map and Ext. 5(1) is his signature. Thereafter, he apprehended the accused and forwarded him to the Court. He forwarded the victim to the Magistrate for recording her statement u/S 164 CrPC and also for medical examination to the Rajgarh State Dispensary. He collected the medico legal report of the victim. After preliminary examination, he submitted the case diary to the Officer-in-charge and after perusal of the case diary, SI Bhaskar Jyoti Phukan submitted the Charge-Sheet against the accused under section 354-A IPC, read with Section 8 of the POCSO Act. Ext. 6 is the Charge-Sheet

- and Ext. 6(1) is the signature of SI Bhaskar Jyoti Phukan which is familiar to him. Ext. 7 is the extract copy of the Rajgarh Outpost GDE No. 460 dtd. 19-11-15 and Ext. 7(1) is his signature.
- 23) If we analyze the cross examination of the IO, it is clear that the victim did not state that the accused had spread rumours that she is of loose moral character, because the IO affirmed about such omission by the victim. The IO also affirmed that the victim did not state under section 161 CrPC that the accused asked her to bend and so she bent.
- 24) Thus, it is clear that the evidence is replete with contradictions and fraught with discrepancies.
- 25) The evidence of the victim does not inspire confidence. The evidence of the victim and her mother appears to be afterthought of subsequent innovation. The reason of thirteen days delay in lodging the FIR was not stated in the FIR. It was introduced anew in the Court.
- 26) I would like to rely on the decision of Hon'ble The Supreme Court in **ND Dayagude vs. State of Maharashtra** [AIR 1977 SC 387] wherein it has been observed that:

"The story narrated by him in his evidence before the Court differs substantially from that set out in his statement before the police and having regard to the large number of contradictions in his evidence---- contradictions not on mere matter of detail, but on vital points----- we do not think it would be safe to rely on his evidence."

- 27) In the instant case also, the reason of prolonged delay has been explained as tarnishing the reputation of the victim. This has not been mentioned by the victim or her mother to the IO. The other contradictions are that the victim did not state before the IO that the accused asked her to bend. These are vital points which constructs the bedrock of the case, but unfortunately the victim has omitted to state these vital points to the IO.
- 28) Moreover, it is apparent that the IO relied on the witnesses garnered by the victim's mother. She went ahead and reported about the incident to the members, president and secretary of the Mahila Samiti and on the basis of their evidence, the IO submitted the Charge-Sheet. No documents regarding the age of the victim was collected. There are more contradictions which are

not required to be discussed. The unexplained silence of the victim for so many days is a major discrepancy in the evidence. Adding to this discrepancy,

there are several discrepancies which has been already discussed in my

foregoing discussions.

29) Recapitulating the entire evidence, it is held that the evidence of X and Smti.

Alu Das does not inspire confidence. Thereby, the accused is not held guilty

of outraging the modesty of the victim and he gets the benefit of doubt. It is

also held that the accused gets the benefit of doubt and he is not held guilty

of sexually assaulting the victim. Although the victim claimed to be a minor of

16 years of age and a student of Class-X, yet due to lack of evidence

regarding her age, it was not plausible to ascertain the age of the victim.

30) The accused Sri Lokeswar Kurmi is thereby acquitted from the charges under

Section 8 of the POCSO Act on benefit of doubt and also he is acquitted from

the charges under Section 354 of the IPC on benefit of doubt.

Judgment is signed, sealed and delivered in the open Court on the 7th day of

July, 2017.

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

APPENDIX

List of witnesses:

- 1. PW-1 Smti. X;
- 2. PW-2 Smti. Alo Das;
- 3. PW-3 Smti. Joonmoni Gogoi;
- 4. PW-4 Smti. Rupamoni Gogoi;
- 5. PW-5 Smti. Mitali Konch Baruah;
- 6. PW-6 Dr. Rajib Saikia;
- 7. PW-7 Sri Meghnath Goswami; and
- 8. PW-8 ASI Arjun Singh.

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Printed Proforma of FIR;
- 5. Ext. 5 Sketch-Map;
- 6. Ext. 6 Charge-Sheet; and
- 7. Ext. 7 Extract copy of Rajgarh OP GDE No. 460 dtd. 19-11-15.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.