#### IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sess. Spl. Case No.22/2014 U/S 448 IPC and 4 of POCSO Act.

[G.R. Case No.2250 of 2014]

Present: Md. M. Ahmed,

Sessions Judge, Morigaon.

State of Assam

Vs

Sri Dilip Deka,

## **Appearance for the Parties**

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. B. C. Saikia, Advocate,

Date of recording evidence :- 24.04.2015, 17.06.2015,

12.08.2015, 27.08.2015 and

08.10.2015.

Date of Argument :- 20.11.2015, 04.12.2015.

Date of Judgment :- 19.12.2015.

### **JUDGMENT**

1. Prosecution case may be narrated in a nutshell as under :-

The informant is one Smti. Monoprava Deka, wife of Sri Arabinda Deka of village Na-Satra Monoha, P.S. Jagiroad, Dist. Morigaon. The victim girl Miss- X (real identity is concealed to save her from infamy) was the daughter of the informant. She was then aed about 12 years. She was a student of Class- VI at the relevant time, when the occurrence took place.

The accused Dilip Deka is her co-villagers and he was the next door neighbour of the informant. According to the prosecution, he was related to the victim family and on the eventful day i.e. on 27.10.2014 at around 3.00 P.M. while the victim Miss-X was sleeping in her house along with her little sister, the accused tiptoed inside the house taking advantage of solitude and in absence of the informant and the accused by entering inside the house gagged the mouth of the victim, undressed her and entered one of his finger inside the vagina of the victim, then the victim cried in pain and on hearing her shout, the informant, who was gossiping with the wife of the accused immediately rushed to the home and on entering inside the house, she found the victim was crying and when she asked the victim, the victim informed her that the accused put his finger inside her vagina. Then, she searched the accused, but the accused fled therefrom. The village people immediately after the incident came to the place of occurrence and they got observed of the entire matter. On the following day, the informant went to Jagiroad P.S. and she lodged the F.I. R. at Jagiroad P.S. and on the basis of which O/C Jagiroad P.S. registered a case vide Jagiroad P.S. Case No.343/2014, U/s 448/376 (2) (h) of IPC, read with Section 4 of POCSO Act against the afore-named accused and investigation was set in motion.

During the course of investigation, the I.O. visited the place of occurrence, examined the material witnesses, drew sketch map of the place of occurrence and also recorded the statement of the victim and subjected her to medical examination and collected the medical report and her statement was also recorded U/s 164 Cr.P.C. Thereafter, having completed the investigation of the case, submitted charge-sheet against the afore-named accused for allegation of offences U/s 448/376 (2) (h) IPC, read with Section 4 of POCSO Act. The accused was not granted bail, he was remanded under judicial custody till trial is completed. Accused was furnished copies of relevant documents as mandate U/s 207 Cr.P.C. Thereafter, my learned predecessor in Court having heard Ld. Counsel of both sides and basing upon materials on record, framed charge U/s 448 IPC, read with Section 4 of POCSO Act against the afore-named accused and read over and explained the particulars of charge to the accused to which he absurd guilty and claimed for tried.

### 2. Point for determination:

- (i) If the present accused on the eventful day i.e. on 27.10.2014 at around 3.00 P.M. committed house-trespass by entering into the dwelling house of the informant and at the same time committed penetrative sexual assault on Miss-X, a minor girl, aged about 12 (twelve) years.
- 3. In this case prosecution has examined as many as 8 (eight) PWs in all, in order to nail the issues in its favour. After the process of recording evidence of the witnesses so adduced by the side of prosecution was concluded, the accused person above named was subjected to examine U/s 313 Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. According to the accused, there was previous dispute regarding land boundary and on that matter, the informant threatened him that she teach him a lesson. His daughter eloped with a Muslim boy, so, the village people did not mingle with him and avoided him and tried to harm him. So, according to him, the village people did not like him and since then he has also no good relation with the village people. To prove this fact accused examined one witness as DW 1 Rupa Deka.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

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

5. In this case prosecution has alleged that the afore-named accused on the eventful day at around 3.00 P.M. at Na-Satra, Monoha under Jagiroad P. S. in the district of Morigaon committed house trespass by entering into the dwelling hose of the informant Smti. Monoprava Deka and thereby committed penetrative sexual assault on Miss – X, the minor girl and daughter of the informant. The said minor girl was examined in this case as PW-3 and while her evidence was recorded some enquiry was made and upon conclusion of the inquiry, this court observed that she could not understand the consequence of oath and as such oath was not administered. In her evidence she has fully supported the prosecution case by stating interalia that at the time while the occurrence took place, she was a student of Class – VI and she

used to call the accused as 'Bordeuta'. On the relevant day, she was sleeping with her sister in her house and her father went for work and her mother went to the house of the accused and then the accused came to their house and he gagged her mouth with his right hand and entered one of his left hand finger in her vagina, so, she felt pain and cry, then, the accused told her that he will give money to her and asked her not to cry and he also bite on her left thigh. So, her mother filed a case at the police station. Police took her to the hospital for examination and her statement was also recorded by one Magistrate. She proves her statement vides Ext.4 and Ext.4 (1) is her signature. In her cross-examination, she has stated that there are two doors in their house, one is in front side and another is in the back side. Her sister was sleeping at that time and woke up later. She came out by crying and then she met her mother, who was coming towards her house. Then, she told her mother about the occurrence, at that time another lady was also present with her mother, except them no other persons were with her mother. She has also stated in her cross-examination that there are quarrel between her parents and the accused prior to the occurrence, nobody has tutored her to depose before the Court. She has also denied the fact that accused did not enter finger into her vagina and also not bite in her thigh.

6. In this case, the learned defence Counsel has challenged on various grounds. According to him, there is no symptom of any penetrative assault, as because from the statement of the victim, it transpires that the accused bite on her thigh and there is no any injury on her private part. So, the evidence of the victim should not be relied upon. He has further argued that there was land dispute in between the informant and the accused, so, there is every chance that he may be falsely implicated in this case by way of revenge. In support of such pleas, the learned defence Counsel placed before this Court the following citation:-

# Nabin Bora Vs. State of Assam, 2004 (1) Gauhati Law Journal 497, Criminal Appeal No.77 of 2000, decided on 20.05.2003.

I have gone through the submission of the Ld. defence Counsel and the decisions submitted by him and found that the facts and circumstances that surfaced are at all not similar to the facts that surfaced in this case, so, the ratio in that case is not at all applicable in this case.

- 7. From the evidence of PW-3, it surfaces that immediately after the incident her mother came to the spot and found the victim in injurious condition. PW-2, Smti. Manoprava Deka, the informant of the instant case. She in her evidence supported the evidence of PW-3. She in her evidence has stated that the residences of the accused situated at the back side of her house and he is the brother of her husband. At the time of the incident, she was in the house of the accused and her daughter (the victim) was sleeping inside her house and on hearing cry of her daughter, she rushed to her house and on questioning her, she told that accused put his finger inside her vagina continuously, for which she felt pain on her lower abdomen. She has also stated in her evidence that she saw the accused went out from her house, while she entered into her house and she asked the accused about the incident, but the accused denied the fact. At that time her husband was not present in the house. She immediately informed about the incident to Manto Medhi and Dimbeswar Master and at about 4.30 P.M. a village mel was held in her house. In that mel Pravat Medhi, Dimbeswar Medhi, Manto Medhi, Dip Deka and some others were gathered and the accused was also present and when they asked the accused about the incident, he told before the villagers that he only kissed the victim and he has not inserted his finger into the vagina of the victim. She filed the ejahar on the next day and the police registered the case and took the victim to Morigaon Civil hospital for medical examination.
- 8. PW-1 is Mrs. Rekha Bhuyan, who examined the victim and she deposed as follows:

On 28.10.2014 she was posted at Morigaon Civil Hospital as Sr. M & H.O. On that day, she examined Miss Tribeni Deka, D/O Sri Arabinda Deka, Vill-Manaha Nasatra, Jagiroad, Morigaon in connection with Jagiroad P.S. case No.343/14, U/s 448/376 IPC. She was escorted by Mrs. S. Borah and she was examined in presence of Mrs. Saleha Begum, ANM of Morigaon Civil Hospital.

Brief history: History of sexual assault. There was forceful entry of fingers into her vagina at her home at about 3 P.M. on 27.10.2014 by her own relatives.

On examination she has found the following:

Identification mark: A black mole on the left wrist joint. Height is 4ft. 5 inch. Weight: 30 Kg. Teeth upper 13 and Lower – 14. Breast was not fully developed and there was no injury. Auxiliary hair was not present. Pubic hair was also not present. Vaginal hymen not ruptured.

There was no external injury in vagina and genital canal. Perineum is also healthy. Vaginal smear examination was done for determination of spermatozoa. Whereas vaginal smear Laboratory registration No.2993 dtd. 28.10.2014.

On microscopic examination there is no spermatozoa seen.

X-ray was done for age determination vide No.4208, 4209, 4210 and 4211. Which was reported by Dr. A. Nasreen . X-Ray report shows that age was between 12 to 14 years.

In her opinion from clinical, radiological and laboratory examination, it was seen that her present age was between 12 to 14 years without the sign of injury except mild tenderness at lower abdomen of the private part at the time of examination.

Ext.1 is the medical report and Ext.1 (1) is her signature. Ext.2 is the X-Ray report and Ext.2 (1) is the signature of Dr. A. Nasreen, which I know.

In her cross-examination, she has stated that the abdominal pain may be caused due to any disease.

In a question of the Court, she has replied that she has not found any disease of the victim.

From the evidence of this medical officer, it is found that the victim girl was aged about 12 to 14 years. She has not found any sing of injury except mild tenderness at lower abdomen of the private part. Thus, determination of such injury indicates that the private part of the victim was violated by somebody, otherwise such tenderness should not be found. So, the fact of inserting finger inside the vagina of the victim, which was alleged by the prosecution was supported by all the PWs.

9. PW-4, is Smti. Banti Deka, she in her evidence has stated that the occurrence took place about seven months ago at about 3.00 P.M. in the house of the victim. At that time she was in her house and on hearing hue and cry, she went to the house of the victim and saw that the victim was crying and the victim told her that the accused put his finger inside her private part and also bite on her thigh. Neighbouring people also gathered there. In her cross-examination, she has stated that the accused is the brother of the husband of the informant. Her marriage was solemnized about eight years ago and since then, she was residing near the house of the

victim. She has no knowledge about any land dispute between the accused and the parents of the victim.

- 10. PW-5 is Smti. Hiramoni Deka, she in her evidence has deposed that the occurrence took place about seven months back at the house of the informant. At that time, she was in her house which was situated adjacent to the house of the informant. At around 3.30 P. M. she heard hue and cry of the victim, so, she came out from her house to the courtyard and she has seen so many persons were gathered in the house of the victim and she heard that the victim stated before the said persons that while she was sleeping in her house, then afore-named accused entered into their house and gagged her mouth, put off her pant and put his finger inside her private part and the accused also bite on her thigh.
- 11. PW-6 is Smti. Sashimai Deka, she in her evidence has stated that the afore-named accused is her nephew and the victim was her grand-daughter and she is the mother-in-law of the informant. She has supported the prosecution case and corroborated the evidence of PW-2 as well as PW-3. At the time of incident, she went to feed water to the Cows and after returned back she has found that the victim was crying, so, she asked her the reason for her cry, then, the victim told her that while she was sleeping in her house, the afore-named accused entered into the house and embrace her, gagged her mouth with cloth, kissed her and put his finger inside her private part and also bite on her thigh. She was examined by police. She has further stated that at that time victim was alone in the house. She has categorically stated that there was no land dispute between the accused and the parents of the victim.
- 12. PW- 7 is Miss Runu Medhi, who has stated that both the accused and the victim were residing adjacent to her house. The occurrence took place about one year back and it was around 2/2.30 P.M. and on hearing hulla of the informant, she went there and found that the victim was crying and when she asked the victim the reason for crying, she told her that the accused grabbed her and also cover her mouth, she (the victim) also told her that the aforenamed accused inserted his finger inside her vagina.
- 13. PW-8 is the I.O. ASI Sonmoni Begum, she in her evidence has stated that F.I.R. was received on 28.10.2014 by the then O/C of Jagiroad P.S. from the informant and he endorsed

her to investigate the case. Accordingly, she started investigation of the case and called the complainant and her daughter (the victim) to the P.S. and their statement was recorded in the P.S. and then she sent the victim girl along with Home Guard Lakhimai Borah to Morigaon Civil Hospital for medical examination and then she went to the place of occurrence and she found a crowd of people assembled in the place of occurrence, then, she made inquiry, examined the witnesses, drew sketch map of the place of occurrence vide Ext.5. Then, having leant that medical examination was over, so, she came to Morigaon and found the victim girl at the Court campus, as the victim was suffering from fever, so, recording statement of the victim girl was deferred by the learned Court for next day. On the next day, the statement of the victim girl was recorded by the Magistrate and after three days of the occurrence, she arrested the aforenamed accused. Thereafter, the I.O. collected the medical report and after completion of investigation, she submitted charge-sheet against the afore-named accused, which she proves as Ext.6.

Thus, from her evidence, it surfaces that on the very day, the statement of the victim was not recorded by the Court U/s 164 Cr.P.C. According to this witness, on the following day of the incident, the victim was suffered from fever, so, the process of recording statement of the victim U/s 164 Cr.P.C. was differed for next day and the said statement was proved as Ext.4 and I have found that the occurrence was taken place on 27.10.2014 and on 29.10.2014, the statement of the victim was recorded.

- 14. I have closely gone through the said statement and found that it has fully corroborated from the evidence of the victim and there is no serious deviation. From the evidence on record, it further surfaces that the accused bite on the thigh of the victim, but the doctor has not found any external injury. However, the evidence of the victim regarding insertion of the finger inside her vagina could not be brass aside.
- 15. I have very attentively and carefully evaluate the evidence on record and found that their evidence suffers from no infirmity. Their evidences are cogent, convincing and worthy of reliance.
- 16. In this case defence taken the plea that there is a land dispute prior to the occurrence between the informant and the accused. To that effect, the accused examined Rupa Deka as

DW-1. She in her evidence has stated that both the accused and informant is next door neighbour. The accused has been residing at that place since two years and that plot of land belongs to the elder brother of the afore-named accused and the land was under possession of the informant before construction of the house. The afore-named accused and the husband of the informant are cousin brothers. After construction of that house there was a quarrel in between the informant and the accused over demarcation of boundary and after this quarrel, the relation between them got strained. The daughter of the afore-named accused was taken by a Muslim boy and they used to visit her house as she is the daughter-in-law of the afore-named accused. The village people objected for visiting of the daughter of afore-named accused to their house, as the daughter of the afore-named accused eloped with a Muslim boy and also the village people conspired to frame the afore-named accused falsely to teach him a lesson. Prior to one month of the incident, village people assembled in front of her house and created disturbing situation. She has further stated in her evidence that she has no knowledge regarding the incident.

Thus, from the evidence of the DW-1, I have found that this witness was the daughter-in-law of the accused, so, naturally, she will try to save the accused and was created a story of land dispute between the accused and the informant.

Another point raised by the defence that there is delay in lodging the F.I.R. I have considered this point in view of the evidence on record and found that the occurrence took place on 27.10.2014 at around 3.00 P.M. and the F.I.R. was lodged on 28.10.2014. The place of occurrence lied about 12 km. away from the P.S. and also the matter was taken at first at village level by convening a village bishar and as the informant did not get any positive result from the said village bishar, so, she lodged the F.I.R. at the P.S. So, there is delay in lodging the F.I.R. and it is sufficiently explained and it cannot be viewed with suspicion.

17. The prosecution in this case alleged that the afore-named accused inserted his finger into the private part of the victim and the charge also framed against him U/s 4 of POCSO Act for committing penetrative sexual assault and a person is said to commit "Penetrative sexual assault" if - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he

manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

18. Thus, from the evidence on record, it is found that the afore-named accused in the eventful day taking advantage of solitary entered into the house of the informant and by finding the victim sleeping with her little sister, gagged her mouth and inserted one of his finger inside the vagina of the victim. So, I have found that the prosecution has succeed to prove the offence punishable U/s 448 IPC, read with Section 4 of POCSO Act against the aforenamed accused beyond all reasonable doubt. In the result, the accused is found guilty for committing offence punishable U/s 448 IPC, read with Section 4 of POCSO Act and convicted him accordingly.

### SENTENCE

Heard the convict accused on the point of sentence. His statement is recorded in a separate sheet. He pleads mercy.

Upon perusal of entire case record, it is found that the accused is now 56 years of age. However, he has done abominable act by inserting his finger into the vagina of the victim, who was a little girl. So, he deserves no mercy and leniency on the point of sentence.

So, considering the gravity of the offence, the accused is convicted U/s 4 of POCSO Act and sentence him to suffer S.I. for 10 (ten) years and also to pay a fine of Rs.5,000/-, in default, suffer S.I. for another 6 (six) months. No separate sentence is pronounced in respect of Section 448 of IPC.

It is found that the victim is a minor girl and she suffered public humiliation and she is the victim of this case, so, she entitled to get compensation from the victim compensation scheme. Let a copy of the Judgment and order be furnished to the Secretary of DLSA, Morigaon to assess the compensation amount that may be paid to the victim for suffering physical as well as mental assault.

Serve a free copy of the judgment to the convict accused and to the Ld. District Magistrate, Morigaon for information U/s 365 of Cr.P.C.

Judgment delivered in the open Court on this  $19^{\text{th}}$  day of December, 2015 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

#### **APPENDIX**

# A. Prosecution witness

- 1. PW-1: Mrs. Rekha Bhuyan,
- 2. PW-2: Smti. Manoprava Deka,
- 3. PW-3:- Miss Tribeni Deka,
- 4. PW-4: Smti. Banti Deka,
- 5. PW-5: Smti. Hiramoni Deka,
- 6. PW-6: Smti. Sashimai Deka,
- 7. PW-7: Miss Runu Medhi,
- 8. PW-8 :- ASI Sonmoni Begum.
- B. <u>Defence witness</u>:
- 1. DW-1 Sri Rupa Deka,
- C. Prosecution Exhibit
- 1. Ext. 1 :- the medical report.

- 2. Ext. 2 :- the X-Ray report.
- 3. Ext. 3 :- the ejahar,
- 4. Ext. 4 :- the statement of the victim.
- 5. Ext. 5 :- the sketch map.
- 6. Ext. 6:- the charge-sheet.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.