IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS,

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 11/2016 (Sessions Case No. 14/2015) corresponding to GR Case No. 677/2016 & Bokajan Police Station Case No. 122/2016 under sections 448 of IPC and 4 of the POCSO Act.

State of Assam

Versus

Shri Naren Boro

Name of informant/complainant:

Smti Jonmoni Kalita

Wife of Sri Pranjal Kalita

Village: Madhabpur

P.S: Bokajan

District: Karbi-Anglong

Name of the accused person facing trial:

Shri Naren Boro

Son of Shri Indreswar Boro

Village: Madhabpur

P.S: Bokajan

District: Karbi Anglong.

Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor.

For the defence : Mrs A. Chakraborty.

Argument heard on : 17.07.2019.

Date (s) fixed for Judgment:: 25.07.2019/ 31.07.2019

JUDGMENT

- It is a case of illegal house trespass and penetrative sexual assault alleged to have committed by the accused person.
- 2. The prosecution case in brief is that on 12.08.2016, the informant-Smti. Jonmoni Kalita lodged a written ejahar with the O/C, Bokajan Police Station stating inter alia that on the same day at about 12 noon, her minor victim daughter aged 8 years was alone at her house. At that time, the accused taking the advantage of absence of her family members illegally entered into their house and caused sexual harassment to her victim daughter. As the victim made hue and cry, the accused fled away. While the accused was asked as to why he did such misdeed, he assaulted the informant. Later, she with the help of villagers of Madhabpur Gaon apprehended the accused, Shri Naren Boro and handed him over to Bokajan PS. On receipt of the ejahar, O/C Bokajan Police Station registered a case vide its Police Station Case No.122/2016 under sections 448/325 of IPC / 8 of the POCSO Act. On completion of investigation, I.O. submitted the charge-sheet under sections 448/376(2)(i)/323 IPC and 8 of the POCSO Act against the accused person.
- 3. The case was received on transfer and on receipt it was renumbered. On completion of appearance of the accused person, copy was furnished to him. Having very carefully gone through the submissions duly advanced by the learned lawyers appearing on behalf of both sides as well as case dairy I found sufficient ground for presuming that the accused person committed the offences under sections 448 of IPC / 4 of the POCSO Act. Accordingly, the charges were framed. The particular

of the offences charged was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During trial Prosecution has examined as many as 8 (eight) witnesses including the investigating and the medical officers. Statement of the accused person was recorded under section 313 of CrPC. Defence declined to adduce evidence. Plea of defence is of total denial.

5. **Points for determination are:**

- (i) Whether the accused person on 12.08.2016 at 12 noon at Madhabpur Gaon under Bokajan Police Station illegally entered into the house of the informant, Smti. Junmoni Kalita for committing offence and that he thereby committed an offence punishable under section 448 of IPC?
- (ii) Whether the accused person on the same date, time and place caused penetrative sexual assault upon the victim having age of 8 years who was the daughter of the informant and that he thereby committed an offence punishable under section 4 of the POCO Act?

6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed prove the case against the accused person. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the

aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

7. PW-1 is Smti. Jonmoni Kalita who has deposed in his evidence that she is the informant of this case and the victim is her daughter. She knows the accused person. The incident occurred about one year back at 12 noon and on that day, she went to Bank. She came back from the bank at 2 PM. On her arrival, she found her daughter weeping by sitting on a chair. On query for weeping, her daughter replied that when she was coming into the room after bath, the accused drew her to the bed and removing her underwear tried to penetrate his penis into her vagina. When she told the accused that she would narrate everything to her(PW-1, the accused left the place. The accused came from the backside of their house by breaking the bamboo fencing. At the time of her going to bank, she locked the gate, but did not lock the door of their house. There was a small entrance provision near the gate whereby minors can move through it. At the time of going to bank, she did not lock the door of the house only for the reason that if delay occurs in returning home, her daughter can enter into the house. Normally, her daughter returns home at 2 PM but on the day of occurrence, she came at 12 noon. She informed the matter to the local people and on being asked, the accused confessed the fact as narrated by the victim. Then she lodged the ejahar at the police station. At the time of occurrence, the age of the victim girl was 8

- years. Police got the victim medically examined and recorded her statement in the Court. The Court handed over the victim to her.
- 8. PW-2 is the victim who has testified in the evidence that she knows the accused person. On the day of occurrence, their classes continued till 12 noon and hence, she came back home. She did not find her mother at home at the time of her arrival. While she made preparation for bathing at the courtyard, the accused came to their house from rear side for return of the tea cups which were sent to the Namghar. The accused lifted her from the courtyard and took her to a bed in their house and made laid down her there on. Then the accused removed his pant and he got his penis touched in her vagina. The accused kissed on her chest and lips. She told him that she would inform everything to her parents, but the accused told her that these are not to be reported. As the accused again kissed by lying her down on the bed, she started crying. In such situation, the accused persuaded her that he would give her biscuit and money. The accused further told her that this matter need not be narrated before others because he would marry her. Thereafter, the accused went out leaving her there. On return of her mother, she informed the incident to her. At the time of occurrence, her father was staying in Kerela. Police got her medically examined and recorded her statement in the Court. Ext.1 is her statement and Ext.1(1) and 1(2) are her signatures.
- 9. PW-3 is Dr Jacqueline Teronpi who stated that on 13.8.2016 while she was working as S.D.M. & H.O. at Diphu Civil Hospital, she examines the victim in connection with Bokaian Police Station Case

No.122/2016 under sections 448/325 of IPC and 8 of the POCSO Act. On examination, she found-hymen torn and congested, labia minora bruised, fourchette congested and the vagina was tendered to touch. Ext.1 is the medical report and Ext.1(1) is her signature. As per the radiology evidence and expert opinion, the age of the victim girl was below 14 yeas approximate and between 9 to 10 years.

- 10. PW-4 is Smti Manju Das who has deposed that she knows the informant and the accused person. The occurrence took place in the year 2016. On the day of occurrence, the accused was working at the Namghar with another person. As the co-workers of the accused went for taking meal, he was alone at the Namghar. The house of the victim is situated near his house. After a while, she saw the accused standing beside the victim. Then she went to her kitchen. At that time, nobody was present at the house of the victim except her. After sometime, the mother of the victim came to her house and asked her if someone came to her house. She told the fact of arrival of the accused to her house. Thereafter. mother of the victim told her that in absence of other family members in their house during noon hours, the accused came there and forcefully made the victim compelled to remove her underwear and tried to rape her. As per version of the mother of the victim, when the victim started making hue and cry, the accused fled away. Mother of the victim lodged a case at the police station and she came to know that the police arrested the accused person.
- 11. PW-5 is Smti Beauty Borbora Saikia who has deposed in his deposition that she knows the informant, the accused and the victim. The

occurrence took place in the year 2016. On the day of occurrence during noon hours, the informant came to her house and informed that when the victim stayed alone at their house, the accused came there and forcibly removed the underwear of the victim and he put his finger into her vagina. The accused also tried to rape her. Being frightened, the victim started shouting and the accused fled away. Thereafter, the informant lodged the ejahar at the police station. Later on, the villagers apprehended the accused and handed him over to police. At the time of occurrence, the victim was 10(ten) years old.

12. PW-6 is Shri Hema Gagoi who has stated in his evidence that he knows the informant and the accused person. The incident took place in the month of January, 2016. On the day of occurrence, he and the accused were working in the Namghar. At about 12 noon, they came out of the Namghar together and he went for taking meal and the accused went to another direction. At about 4/5 PM, he again came to the Namghar for performing some formalities and in front of the Namghar, he saw the villagers beating the accused person. On being asked, the people gathered told him that the accused had tried to rape the victim taking the advantage of absence of her family members, but as the victim made noise, the accused fled away. Knowing this incident, the villagers called the accused and apprehended him. The house of the victim stands near the Namghar. At that time, the victim was 9 years old. Later on, the villagers informed the police about the incident and accordingly police came there and took the accused to the police station.

- 13. PW-7 is Dr Dimbeswar Bharali who told that on 30.08.2016 while he was serving as C.M.O. & H.O. at Bokajan CHC, he examined Smti. Junmoni Kalita escorted by Bokajan Police and found tender bruise area over the neck. Ext.2 is the medical report and Ext.2(1) is his signature.
- 14. PW-8 is Shri Nripen Saikia who investigated the case of Bokajan PS No. 122/2016 lodged by the informant. During investigation, he went to the place of occurrence, drew the sketch map and recorded the statements of the witnesses. He arrested the accused person. He got the victim medically examined in the hospital and her statement recorded in the Court. He also got the accused medically examined. He collected the medical report of the victim and statement of the victim recorded in the Court. Amidst the investigation, he prayed before the Court for giving permission to add the section 376(2) (I) of IPC with the case. On completion of investigation, he found sufficient materials and accordingly, he submitted charge-sheet under section 448/376(2)(I)/323 and 8 of the POCSO Act against the accused person. Ext.4 is ejahar, Ext.5 is sketch map and Ext.6 is charge-sheet. Ext.5(1) and 6(1) are his signature.
- 15. At first let see whether the victim was child at the time of occurrence. PW-1 is the mother of the victim and the informant who can be considered to be best person who can say actual age of the victim at the occurrence. According to her, at the time of occurrence the victim was 8 years. PW-3 is the medical officer who examined the victim on 13-08-2016. According to him the victim was 14 years approximate between 9 to 10 years. According to

PW-5, the victim was 10 years at the time of occurrence. According to PW-6, the victim was 9 years old at the time of occurrence. There is no evidence on record showing that any school certificate containing date of birth was seized. The defence has not disputed the evidence of the medical officer marked as PW-3. Considering all aspects I find no way to discard evidence of the medical evidence marked as PW-3 so far age of the victim is concerned coupled with evidence of PW-1, PW-5 and PW-6. Now I have come to conclusion that at the time of occurrence the victim was about 10 years old. According to the section 2(d) of the POCSO Act, a child is a person who has not completed 18 years. Hence it can be said that at the time of occurrence, the victim was a child.

16. The prosecution version is that the accused entered into house campus of the informant while the victim was alone. The accused took the victim inside the house and made her laid down on the bed and thereafter made attempt to penetrate his penis into her vagina after removing her wearing. In such a case evidence of victim considered to be most vital and important. It is found that the victim marked as PW-2 flawlessly stated in her testimony that on the day of the occurrence at 12 Noon she came home back from the school while none was present in the house. Thereafter while she took preparation for taking bath in the courtyard the accused entered into their campus to returned cup plate by breaking bamboo fencing put up in the boundary. She has further stated that entering into their house campus the accused lifted her inside the house and made her laid down in the bed. Thereafter the accused got his

penis touched her in her vagina after removing her pent and kissed her on chest and lips. She has also stated that when her mother came to the house she informed her about the occurrence and that Police got her statement recorded in the Court. Ext-1 is the said statement.

17. Ext-1 gives a different story as to how the victim was taken inside the house from the courtyard. However it shows that the accused got his penis touched in the vagina of the victim. It also shows that the accused touched the vagina of the victim with his finger and kissed her breast and face. PW-1 is the informant cum mother of the victim to whom the victim first communicated about the occurrence immediate after the occurrence. Her evidence shows that the accused took the victim from the courtyard while she was taking bath and made her laid down in a bed and tried to penetrate his penis into her vagina. PW-4 is Smti. Monju Das who resides near the house of the informant who has stated that she saw the accused entering into the house campus of the informant. She has further stated that informant informed her that the accused entering into their house made attempt to make sexual intercourse with the victim. PW-5 also hearsay witness who has stated in her evidence that the informant informed her that the accused made attempt to make sexual intercourse with the victim and inserted his finger into her vagina. PW-6 is also a hearsay witness who has stated in his evidence that a group of persons who were assaulting the accused informed him that the accused made attempt to make sexual intercourse with the victim.

- 18. PW-6 is the medical officer. Ext-2 is the Medical report which shows that on examination of the informant PW-6 found tender bruise over the neck only. PW-3 is the medical officer who examined the victim. Her evidence shows that on examination of the victim she found her hymen being torn and congested. Ext-1 is the medical report of the victim. The medical report marked as Ext-1 also shows that the vagina of the victim was touched.
- 19. PW-8 is the investigation officer who has stated that during investigation he got the statement of the victim recorded in the court and the victim medically examined. He has also stated that he visited the PO and prepared the sketch map of the PO. Ext-5 is the sketch map of the PO. Ext-5 shows that the house of the informant situated in between the Namghar and the house of Prafulla Das. PW-4 is the wife of the said Prafulla Das. Hence it cannot be disbelieve that PW-4 saw the accused entering into the house campus of the informant.
- 20. The accused has stated in his statement recorded under section 313 of the CrPC that he left the Namghar with Hemo Gogoi and that while he was returning the cups to the house of the informant said Hemo Gogoi was with him. Evidence of Hemo Gogoi marked as PW-6 is totally silent that he was with the accused person while the accused person was returning the cups to the house of the informant. The cross examination of PW-6 shows that the accused after leaving the Namghar walked with him upto his house(House of the Hemo Gogoi).
- 21. Of-course there are some discrepancies in the evidences of PW-1, the informant and PW-2, the

victim. Learned defence counsel has drawn my attention to the cross examination of PW-6 and submitted that the cross examination of PW-6 suggests that the accused was no way involved in the alleged occurrence. I have very carefully gone through the cross examination of PW-6 and come to conclusion that on the basis of contention of cross examination of PW-6 it cannot be said that it was not impossible for the accused to entered into the house campus of the informant and committed sexual assault as stated by the victim. I also find on the materials points there is no contradiction and discrepancies in the evidence on record.

22. It is evident that the accused is the co-villager of the informant and used to visit the house of the informant sometimes. Defence has not disputed the fact that at the time of occurrence the informant was not in the house and the victim was in the house alone. There is a no evidence on record showing that there was a any enmity between the informant and the accused. The fact itself shows that the accused tried to take advantage finding the victim in the house alone. In view of the discussion made above, I find no way to disbelieve evidence of victim supported by Medical evidence and other oral evidence. Accordingly I have found that the prosecution has succeeded in establishing its case under sections 448 of the IPC/8 of the POCSO Act.

ORDER

23. In the result, I find the accused Sri Naren Boro guilty under sections 448 of the IPC/8 of the POCSO Act and accordingly he is convicted.

- 24. On the point of sentence the accused person is heard and to that effect his statement is recorded. Learned lawyer appearing on behalf of the accused person has contended that it is a fit case wherein the court can extend leniency to the accused person. On the other hand, learned public prosecutor has submitted that the accused needs to be punished as per provision of Law. Accused is a married person having 2 children. It appears from the statement of the accused made before the court that he is the only earning member of his family and that he was not convicted earlier by the court of Law. Accused is a fully matured and grown up person and he committed the offence with cool brain. Considering nature of the case, I am of the opinion that the accused needs to be punished exemplary. However, I do hereby Order the accused Sri Naren Boro to undergo RI of 6 months for the section 448 of the IPC and RI of 4 years and to pay fine of Rs. 1000/- i/d SI of 1 months for the section 8 of the POCSO Act. Set off the earlier detention period if any. The sentences will run concurrently. Let certified copies of the Judgment and Order be supplied to the accused persons at free of cost. Also send a copy of the Judgment to the learned District Magistrate, Karbi Anglong, Diphu in terms of the section 365 of the CrPC.
- 25. No order as regard recommendation for compensation as laid down under section 357 A of the CrPC is passed.
- 26. Accordingly this case is disposed of on contest.
- 27. Given under my hand and seal of the Court on this 31st July, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS)
AJS)
Special Judge
Diphu, Karbi Anglong, Assam
Anglong,

(Md. A.U.Ahmed,

Special Judge Diphu, Karbi

APPENDIX

Prosecution Witnesses:

PW1- Smti Jonmoni Kalita

PW2- Victim

PW3- Dr Jacqueline Teronpi

PW4- Smti Manju Das

PW5- Smti Beauty Borbora Saikia

PW6- Shri Hema Gagoi

PW7- Dr Dimbeswar Bharali

PW8- Shri Nripen Saikia

Defence Witnesses: Nil

Prosecution Exhibited:

Ext.1- Statement of the victim

Ext.1- medical report

Ext.2- Another medical report

Ext.5- sketch map

Ext.6- Charge Sheet

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam