

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
Special Judge,
Dhemaji,

JUDGMENT IN SPL(POCSO) CASE NO. 15(DH) 2017.

U/s 376 of I.P.C. R/W Sec.4 of POCSO Act.

(G.R. Case No.257/2017(GMK), Gogamukh P.S. Case No.55/2017 Under Section 4 of POCSO Act)

The State of Assam

- Versus -

1. Shri Pitow Chutia @ Rajen,

S/O Santi Chutiam,
R/O Chutiakari Gaon,
P.S. Gogamukh,

Dist.- Dhemaji..... Accused Person

Appearance:

Shri A. Fogla,

Public ProsecutorFor the State

Shri G.S. Lahan , AdvocateFor the Accused

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Dhemaji.

Date of prosecution evidence : 25-08-2017, 01-12-2017, 12-02-2018,

and 10-07-2018,

Date of argument : **28-03-2019.**

Date of Judgment : **09-04-2019.**

JUDGMENT

1. The prosecution case in brief is that on 11-04-2017 complainant- Smt. 'X' (name is withheld) lodged an ejahar with Gogamukh Police Station alleging interalia that on 10-04-2017 at about 7 P.M. in the evening while she was going to a nearby shop to bring tablet, the accused- Pitow Chutia grabbed her from behind, gagged her mouth, forcibly lifted her to the back side of the M.E. School, threatened her not to make any noise and thereafter he committed rape on her by lying her down on the ground and he left the place.
2. On receipt of the ejahar, police registered a case vide Gogamukh P.S. Case No.55/2017 u/s 4 of the POCSO Act. Police started investigation and on completion of investigation submitted Charge-sheet against the accused person u/s 4 of the POCSO Act.
3. On receipt of the case record and on appearance of the accused persons, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 376 of IPC read with sec.4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. During trial, the prosecution examined 6 witnesses to prove its case. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of denial. However, defence examined none.
4. **Point for determination :**

(1) That you , about three days before "Bohag-Bihu" of 2017 you committed sexual intercourse with Smt. 'X', a girl below 18 years of age and thereby you committed an offence punishable u/s 376 of IPC R/W sec. 4 of POCSO Act
5. I have gone through the evidence on record and heard arguments of both sides.

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Discussion, Decision and Reasons thereof :

6. **PW1** Shri Anil Tamuli stated that the complainant is his daughter. He knows the accused. Occurrence took place about 6/7 months back (from the date of his recording evidence) at the time of 'Bohag-Bihu'. On the day of occurrence he arrived at his home after doing daily hazira work. His wife told him that accused teased her daughter. Then he went to the Police Station along with his daughter-Smt. 'X' and filed ejahar through Pinki. Police questioned him. Victim was medically examined by Doctor. She was brought to the Court. She gave statement before the Magistrate. This witness was declared hostile by the prosecution.

In his cross-examination by the prosecution, he (PW1) denied that while he gave statement before police he stated that on the day of occurrence i.e. on 10-04-2017 in the evening he went to the Namghar as there was rehearsal for 'Bhawna'. His wife and his daughter were at home. While he returned home from the Namghar at about 10 PM his wife told him that at about 7 PM the victim went to the shop to bring tablet for her illness, then accused gagged the victim 'X' on the road, took her to the M.E. School, committed rape on her and thereafter accused fled away.

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In her cross-examination (by defence) PW1 stated that it is a fact that the statement read-over to him by the Public Prosecutor in the Court was not stated before police. The case was filed due to misunderstanding. Victim was aged about 14 years at the relevant time. He could not remember the date of birth of the victim. In the year, 2016 the victim was married to a person

7. **PW2** the victim Smt. 'X' stated that she filed complaint in this case. She knows the accused- Pitow Chutia. Occurrence took place about 4/5 months back (from the date of her deposition). On the day of occurrence in the morning at about 5 PM she was coming towards the road from her house taking a mobile phone in her hand. Then accused wanted to see his mobile

which was in her hand. She refused to give the mobile. Then he wanted to take her mobile forcefully. Then there was pull and push between them and she rebuked him(accused). She came home and reported the matter to her father. Then her father was consuming liquor. Her father took her to the police station. She wrote an ejahar by another person and submitted the same at the police station by putting her signature. Police questioned her. Doctor examined her medically. She was brought to police station. She gave statement before the Magistrate. Exhibit- 1 is the ejahar filed by her and Ext-1(1) is her signature therein. Ext-2 is her statement before the Magistrate and Ext-2(2) is her signature.

PW2 was also declared hostile by the prosecution.

In her cross-examination by the prosecution, she stated that it is a fact that while she gave her statement before Magistrate and Police, she stated that her father was not at home and he went to his work. Her mother was not well. She went to the nearby shop from her house to bring tablets. While she reached Borguri M.E. School, the accused gagged her mouth with cloth and lifted her to the backside of the said school. Accused threatened her if she would cry, then he will kill her. Accused committed rape on her lying her down on the ground by removing her clothes and thereafter, he fled away.

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In her cross-examination (**by defence**), she stated that the accused did not commit rape on her by removing her clothes as she stated before the Magistrate. She admitted that she stated before Magistrate and Police about committing rape on her by the accused on being angry with the accused. The ejahar was lodged as per the version of her father. The evidence deposited in the Court today is true. Accused did not commit any bad act with her. She admitted that in the year 2015 she was married to a person of Dhakuakhana Bhumajarani. But she came home back as the said person

was already married. She denied the defence suggestion that she is above 18 years of age.

8. **PW3** Smti Bihuti Tamuli stated that the complainant is her daughter. The accused is her co-villager. Occurrence took place about 4/5 months back (from the date of her deposition). On the day of occurrence she was at home as she was not well. Her husband went to do hazira work. IN the evening Smt. 'X' went to the road taking a mobile in her hand. After returning home she told that the accused pulled and pushed her (victim) mobile. Police questioned her. This witness (PW3) was also declared hostile by the prosecution.

In cross-examination by prosecution, PW3 denied that while she gave statement before police she stated that on 10-04-2017 in the evening time her husband was not at home and she was not well and so she sent her daughter/victim to a shop of their village to bring tablet. At about 7 PM when her daughter/victim went to the shop by the road, the accused Pitow Chutia forcibly gagged her mouth and took her to the back side of the M.E. School and committed rape on her and thereafter he fled away. Her daughter came home crying and told her about the occurrence. When her husband came home, she told about the occurrence to her husband.

In cross by defence, PW3 stated that it is a fact that her daughter/victim did not tell her about committing rape on her by the accused on the back side of the M.E. School. In fact, her daughter was not raped by the accused. She could not remember the date of birth of the victim. She stated that she does not know what is '**Dharkhan'**

9. **PW4** Shri Jitram Chutia stated that he knows the complainant as well as the accused. Occurrence took place about 8 months back (from the date of his deposition). One day police came to him and asked whether he knew about the incident involving the victim Smt. 'X'. Police took him to victim's house. Police also visited the house of the accused. Police questioned

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the accused as to whether he had physically harassed the victim 'X'. He could not grasp what reply he gave to police. Victim's father told police that the accused had sexually assaulted the victim.

Defence declined to cross-examine this witness.

10. **PW5** Dr. Padmeswar Pegu stated that on 11-04-2017 he was at Gogamukh PHC as Medical Officer. On the day, he examined Smti Pinki Tamuli aged about 14 years on police requisition vide Gogamukh P.S. GD Entry No.08 dated 11-04-2017. The girl was escorted and identified by WPC-Pinky Tirky of Gogamukh P.S. in presence of Sikharani Kaman. On examination, he found no any injury or marks of violence over her body.

Examination of Genitalia:

Pubic Hair- Present, no any foreign bodies.

Clitoris- Normal,

Labia majora & minora – No injury,

Fourchette – Admits 3 fingers.

Hymen – Found absent.

Vagina- Congestion of the posterior region.

Injuries- Posterior vaginal wall is congested.

Complain pain on introduction of the fingers.

No any abrasion and injuries are found inside the vagina.

Right wrist joint and right elbow joint both complete fusion of epiphysis with diaphysis is seen in elbow joint. Epiphysis is not united with diaphysis in wrist joint. Age of the girl is below 18 years.

In his **opinion**, PW6 (Doctor) opined that no any definite sign of sexual act and marks of violence in her body was found. As per radiological report, the age of the victim is below 18 years. On vaginal swab examination, no spermatozoa detected.

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Doctor (PW5) was not cross-examined by prosecution.

11. **PW6** Sri Diganta Das stated that on 11-04-2017 he was posted at Gogamukh PS as ASI of Police. On that day O/C Gogamukh received an ejahar from Smti 'X' (victim) and registered a case vide P.S. Case No.55/2017 u/s 4 of POCSO Act and entrusted him for preliminary investigation of this case. He also recorded statement of complainant/victim u/s 161 Cr.PC. at P.S. The victim was medically examined. Thereafter he visited the PO i.e. back side of the Borguri ME School and drew sketch map. He produced the victim before Magistrate for recording statement u/s 164 Cr.PC. He arrested the accused Pitow Chutia @ Rajen. He collected the medical report. After completion of the investigation he handed over the case diary to O/C Gogamukh P.S. on 25-04-2017. Thereafter O/C Bhimkanta Pegu on perusal of case diary and on the basis of the materials collected and submitted charge sheet. Ext.6 is the sketch map and Ext.6(1) is his signature. Ext.7 is the charge sheet and Ext.7(1) is the signature of O/C Bhimkanta Pegu which is known to him.

In cross-examination PW6 denied the defence suggestion that Exts-8 and 9 , statements were not properly recorded by him.

Appreciation of evidence :

12. Prosecution examined as many as six witnesses in this case. The victim has been examined as PW2. The victim's version is that while she was walking on the road, the accused met her and wanted to see her mobile handset in her hand. She refused and then scuffle ensued between them. She came home and reported the matter to her father and her father drunk at that time and she reported the matter in the police station. Prosecution declined PW2 hostile and cross-examined her. In cross by prosecution she stated that accused committed rape on her. However, in her cross examination by defence she stated that accused did not commit rape on her and she made statement before Magistrate regarding commit rape by the

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accused. She clearly stated that accused did not commit any bad act with her. PW1 father of the victim and PW3 mother of the complainant also turned hostile. In their cross-examination by prosecution they stated that accused committed rape on their daughter, but in their cross examination by defence they denied that accused committed rape on her daughter. PW7, doctor did not find any sign of sexual intercourse or violence mark on the body of the victim.

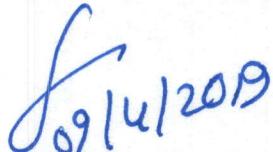
13. I have carefully considered the evidence on record. It is found from the evidence of the vital witnesses including the victim that they have given different version of different stages regarding the occurrence of the offence. As discussed above we find that the victim turned hostile and in her cross by defence she stated that accused did not do any bad act with her. Even her parents PW1 and PW3 did not support the prosecution case.

14. Considering the evidence on record and the facts and circumstances I find that prosecution has not been able to prove the charges against the accused beyond all reasonable doubt.

15. In view of the above, I find the accused- **Pitow Chutia @ Rajen** not guilty u/s 376 of the I.P.C R/W with section 4 of POCSO Act. Accordingly, the accused is acquitted of the charges leveled against him. Set him at liberty forthwith.

16. Judgment pronounced in open Court.

17. Given under my hand and seal of this Court on this the **9th day of April, 2019.**



(S. Das)
Special Judge,
Special Judge
Bhemaji.
Bhemaji