## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 21 of 2017

(Under Section 354 of the IPC read with section u/s 18 of the POCSO Act, arising out of G.R. Case No. 1166 of 2016)

Present :- Sri Ashok Kumar Borah, AJS

**Special Judge, Sonitpur** 

**Tezpur** 

Prosecutor State of Assam

-vs-

Accused :- Sri Ismal Bagh @ Small Tanti

Son of Israil Bag Resident of Amaribari Police Station - Rangapara Dist:- Sonitpur, Assam

Date of framing Charge :- 05/05/2018

Date of Recording Evidence :- 05/06/2018 and 31/07/2018

Date of examination of accused u/s 31:- 31/07/2018

Cr.P.C.

Date of Argument :- 31/07/2018

Date of Judgment :- 31/07/2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. H.P. Sedai, Advocate.

### **JUDGMENT**

- 1. In this case accused Sri Ismal Bagh @ Small Tanti is put for trial for allegation of charge under Section 354 of the IPC read with section 18 of the POCSO Act, 2012.
- 2. The prosecution case according to the FIR in brief is that on or about 11 a.m. of 02-04-2016 while the informant's 15 years old minor daughter went to attend nature's call in a garden she got a sound from her backside then she stood up and on being seen the accused she raised alarm. Then the accused embrace her, forcefully fell her down with attempt to commit rape, but informant's daughter again raised alarm then accused fled away. On 04-04-2016 a village meeting was convened for that incident. As there were no solution held in the meeting so informed was asked to file the case. Hence, this prosecution case.
- **3.** Accordingly, informant Kiran Bag, father of the victim, filed the ejahar before the O/C of Rangapara police station on 12-04-2016. On receipt the ejahar, the Officer-In-Charge of Rangapara Police Station registered the case vide Rangapara P.S. Case No. 30/16 u/s 354 B of IPC read with section 12 of POCSO Act. After completion of usual investigation, the O/C Rangapara Police Station filed charge sheet u/s 354 (A) of IPC read with section 12 of POCSO Act against the accused Sri Ismal Bagh @ Small Tanti.
- **4.** On being appeared the accused before this Court, after hearing both parties, I framed charge u/s 354 of IPC read with section 18 of POCSO Act, against the accused Sri Ismal Bagh @ Small Tanti and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case, prosecution has examined 3 (three) numbers witnesses which includes the victim, other one independent witness and complainant, who is the father of the victim. After examination of the aforesaid witnesses, learned counsel for the accused submitted to close the evidence on the ground that statement of complainant and victim could not reveal any

materials of the alleged offence as such it would be futile to examine the other witnesses. I have also heard the learned Special Public Prosecutor. I have carefully perused the statement of the victim, complainant and other witness. From the statements of the complainant and most particularly statement of the victim, no materials of the alleged offence is revealed against the accused. Therefore, I think that prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed. Accused was examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegation and evidence and declined to give defence evidence.

- **6.** I have heard arguments put forwarded by learned advocate of both the parties.
- **7.** The point for decision in this case is that -
  - (1) "Whether the accused on 02-04-2016 at about 11 a.m./12 O' noon at Amoribari Tinline under Rangapara Police station, assaulted (or used criminal force to a woman, intending to outrage) (or knowing it to be likely that you would thereby outrage) the modesty of the daughter of the informant, namely, Miss X (15 years) and attempted to commit any offence punishable under the POCSO Act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence, thereby committed an offence punishable U/S 354 of the IPC read with section 18 of POCSO Act

### Reasons, Decisions and reason for decision.

**8.** To arrive at the judicial decision, let me appreciate the evidence on record.

9. PW 1 Sri Kiaran Bag, the complainant, stated that the incident took place about 1½ years ago at about 10 a.m. Victim is his daughter. At the relevant time she was aged about 15 years. One boy namely Jenial Batra reported him that when my victim daughter went to attend the nature's call inside the garden, at that time accused and the victim girl came out from the garden and the victim girl was crying. Thereafter, Jenial reported him that he meet victim while she raised alarm. Then he searched the said Ismal but could not found her. Then he lodged ejahar before the Rangapara police station where he put thumb impression. The ejahar was written by one person as per his instruction. The ejahar was read over to him and then he put thumb impression thereon. His victim daughter was medically examined by a doctor. Her statement was also recorded by learned Magistrate. Thereafter, his victim daughter was handed over to him. Now, she is living with him.

In cross-examination, he admitted that he has\_not seen the incident himself. He has lodged the ejahar as reported by Genial about the incident. The ejahar was not read over to him.

- **10.** PW 2, Sri Jenial Batra, upon which information, the PW 1 filed the ejahar, stated that the incident took place about 1½ years ago at about 11/11.30 a.m. he went to see the cattle inside the garden then he heard screaming of the daughter of Kiran. Her age was about 15 years at the relevant time. The he saw that victim was crying. Near victim, Ismal was standing there. Then he informed it to PW 1.
- PW 3, the victim Miss X deposed that the incident took place about 2/3 years back. During that time she was about 16 years old. At the time of incident, she went to a garden to attend natures call. During that time, she had heard a sound that somebody has come by walking. When she stand up she did not see any person. Then she shouted and come out to road. In the road she has seen some cattles are there. During that time accused Ismal Bag asked her what was happening. She told him that when she attended natures call she heard somebody has going on foot. Then out of fear she shouted and crying. Accused Ismal Bag did not do any misdeed to her. During that time one boy named Jenial saw them and informed the matter to her father distortedly. Out

of anger, her father scolded her and then he filed this case against the accused person. After instituting the case, police recorded her statement. Then she has been examined through doctor. Thereafter, she was taken to Court to give statement u/s 164 of CrPC. As her father scolded her, therefore, she is bound to give such statement before the Ld. Magistrate. Actually no such incident took place as stated by her before the Ld. Magistrate. Ext 1 is her statement recorded u/s 164 of CrPC before the Ld. Magistrate. Ext 1(1-2) are her signatures.

In cross-examination, she admitted that when she was brought to Ld Magistrate to record statement, she has made the statement as per the instruction of her father. She wants to withdraw the case.

- **12.** These much is the evidence of the prosecution.
- **13.** The accused pleads total denial while his statement was recorded u/s 313 Cr.P.C. he also denied to give defence evidence.
- **14.** I have heard the arguments put forwarded by learned counsel of both sides.
- **15.** To prove the charge u/s 354 of the IPC, the prosecution must prove
  - "(1) A woman was assaulted or subjected to use of assault criminal force on her; and
  - (2) The intention of the accused was to outrage her modesty and
  - (3) the accused knew that her modesty will be outraged thereby.
- **16.** In this type of case, the statement of victim girl is most important to decide. Here in this case PW 3 Miss X stated that "accued did not do any misdeed to her. During that time one boy namely Jenial Batra saw them and informed the matter to her father distorted. Out of anger, her father filed the ejahar against the accused." She also stated that she made statement u/s 164 Cr.P.C. as her father scolded and instructed what to say before the learned

Magistrate, accordingly she made statement. Therefore, her statement made before the learned Magistrate u/s 164 Cr.P.C. is not voluntary.

The person who informed the PW 1 about the incident is the PW 2, who stated that at the relevant time he went to see the cattle inside the garden where he heard screaming of victim, when he go forward, victim was found crying and near the victim accused was standing there. He asked the accused why he was standing near the victim and then he informed the matter to PW 1. Therefore, the reporting person upon which the complainant filed a case, in fact stated nothing any allegation against the accused. Therefore, from the statement of victim no ingredients was revealed to prove the allegation u/s 354 of the IPC.

**17.** Similarly, to prove the charge u/s 18 of the POCSO Act, the prosecution must prove that –

"To convict the accused section 18 of POCSO Act the prosecution must prove that accused attempted to commit any offence punishable under this act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence."

Here in this case as stated above, victim Miss X as PW 3 clearly stated that accused Ismal Bagh did not do any misdeed to her. She also stated that she made statement u/s 164 Cr.P.C. according to the instruction of her father. Giving good bye to the prosecution case, she stated that she does not like to proceed the case and she wants to withdraw the case. Hence, her statement is silent as to any of the ingredients of section 18 of POCSO Act. Therefore, the charge u/s 18 of the POCSO Act is also failed.

**18.** In view of the aforesaid discussions, I am bound to hold that the prosecution has categorically failed to prove any of the charge levelled against the accused person beyond any reasonable doubt. As such, the accused Sri Ismal Bagh @ Small Tanti is entitled to get acquittal on benefit of doubt. Hence, accused Sri Ismal Bagh @ Small Tanti is acquitted and set him at liberty forthwith.

**19.** The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the  $31^{\rm st}$  day of July, 2018.

(A.K. Borah) Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(A.K. Borah) Special Judge, Sonitpur, Tezpur.

Transcribed and typed by me.

(R. Hazarika)Steno.

# **APPENDIX**

# **Prosecution Witness**

1. Prosecution Witness No.1 :- Sri Kiran Bag , complainant

2. Prosecution Witness No.2 :- Sri Jenial Batra

3. Prosecution Witness No.3 :- Victim Miss X.

## **EXHIBIT**

Ext. 1 : 164 Cr.P.C. statement of the victim.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR.