IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR

SPECIAL POCSO CASE NO. 38 of 2017

Under section 8 of POCSO Act.

(Arising out of G. R Case No. 2997 of 2017)

State of Assam

-Vs-

Sri Sankar Gowala ... Accused Person

Present: Smti I. Barman, AJS,

Special Judge, Sonitpur, Tezpur.

For the State : Mr. M.C. Baruah,

Special Public Prosecutor

For the accused : Sri N.M. Goswami, Legal Aid counsel.

Date of Argument : 15-03-2019.

Date of Judgment : 29-03-2019.

JUDGMENT

- 1. The genesis of the present case is sexual assault on a thirteen years old girl (herein after called as "the victim"). It is alleged that on 06-08-2017 at around 4 p.m., the accused Sankar Gowala by gagging the mouth of the victim dragged her from Rangamancha of their village to the nearby jungle and attempted to commit her rape but on raising alarm, when local public reached there, accused left the victim in the jungle.
- 2. On receipt of the FIR (Ext.1) on 06-08-2017 from the informant (PW1), the victim's father, the In-charge of Bihaguri Police Out Post made the G.D. Entry No. 85 dated 06-08-2017 and forwarded the FIR to the Officer-in-

Charge of Tezpur Police Station. On receipt of the same, the Officer-in-charge of Tezpur PS registered the case being Tezpur P.S. Case No. 1572/17 u/s 341/352 of IPC read with section 8 of POCSO Act and entrusted ASI Suren Phukan to investigate the case who already launched the investigation of the case. In course of investigation, the Investigating Officer (PW 7) visited the place of occurrence, recorded the statement of the witnesses, arrested the accused, sent the victim for medical examination, got her statement recorded u/s 164 Cr.P.C. and on completion of investigation having found materials, laid chargesheet against the accused Sankar Gowala u/s 341/352 of IPC read with section 8 of POCSO Act.

- 3. On appearance of the accused person before this Court, after furnishing necessary copies as required u/s 207 of Cr.P.C. and having heard both parties, my learned predecessor, framed charge u/s 8 of POCSO Act against the accused Sankar Gowala and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.
- 4. To substantiate the case, prosecution examined as many as seven numbers of witnesses. On closure of the prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. wherein the accused denied all the incriminating evidence that emerged against him and stated that when the victim girl, who is physically handicapped, came near to a school of her house, she fell down upon mud and at that time he was sitting in the verandah of the school and seeing the girl falling down, he lifted her but then out of fear, she cried and returned home and thereafter filed the FIR implicated him falsely.
- I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.
- 6. The point for decision in this case is that -

(1) "Whether the accused Sri Sankar Gowala on 06-08-2017 at around 4 p.m. at Gabhoru Sib Mandir under Tezpur Police Station committed sexual assault on the victim Miss "X", a minor girl aged about 13 years, and thereby committed an offence punishable under section 8 of POCSO Act?

Reasons, Decisions and reason for decision.

- 7. Mr. M. Baruah, the learned Special Public Prosecutor strenuously argued that the materials on record undoubtedly project a case of sexual assault on a handicap minor girl. He further submitted that the evidence of the witnesses of alleged sexual assault is enough to convict the accused person.
- 8. Controverting the said argument, Mr. N. Gowami, the learned legal Aid counsel appearing for the accused, submitted that evidence available on record coupled with the evidence of the victim, does not warrant conviction of the accused person.
- 9. In the present case in hand, the informant who is the father of the victim claimed the age of the victim as 13 years whereas according to victim's mother their daughter was about 15 years at the relevant time and as per evidence of PW 5, the victim was 13/14 years old. According to the informant, the victim was a student of Gopinath Bordoloi Girls's school but the Investigating Officer did not seize any certificate regarding the age of the victim. On the other hand, the guardian of the victim refused for medical examination of the girl. However, the age of the victim is not disputed in this case. In the above, taking the evidence of the parents as well as the victim, it can be safely held that she was child below the age of 18 years at the time of incident.
- 10. Now, the question is whether the accused Sankar Gowala committed any offence on the victim child. In this respect, let me travel through the evidence adduced by the prosecution side.
- 11. PW 1 is the father of the victim as well as the informant of this case. He deposed that on the day of incident at about 3.30/4 p.m. his victim daughter aged about 13 years went to "Rangamancha" to collect leaves of coconut tree but after some time his daughter came crying and reported his elder sister (PW 3) that when she went to collect leaves of coconut tree, the accused gagged her mouth and by pressing her neck had taken her to the jungle near "Rangamancha" and tried to lay her down, but on raising alarm,

the accused left the place. She informed the incident to him and his family members. Then they searched the accused and found him sleeping in the backside of the shop. He brought the accused to the police station and handed over to police. Thereafter he filed the FIR, Ext.1.

During cross, he stated that his victim daughter is physically handicapped due to which sometimes she fell down and in those situations, the persons near her, used to help her to get up. He informed police over phone about the incident. Accordingly, police came and took the accused to the police station. He admitted that he had not seen the incident but he had seen injury mark on the neck of his victim daughter. Admittedly he had not seen mud stains in the wearing apparel of the victim. Police seized one chappal of the accused from the place of occurrence.

12. Close on the heels of the evidence of the informant, PW 2, the mother of the victim girl who stated that on the day of incident at around 3.30/4 p.m. her daughter went towards "Rangamamcha" to collect coconut leaves and branches of trees. At that time the accused was sitting in the veranda of the "Rangamancha". After some time her victim daughter by crying came and reported Ranju Gowala (PW 3) that when she went for collecting branches of tree and coconut leaves, then the accused by gagging her mouth and pressing her neck, took her to the nearby jungle. Thereafter, the accused tried to lay her down and on raising alarm when the accused left her, she ran towards home by crying. The victim informed the matter to her and other family members. Lateron, her husband caught the accused and handed over to police. She further stated that the victim is physically handicapped.

During cross, she stated that she possessed the birth certificate of the victim. According to her the accused did not commit any misdeed to her victim daughter and only attempted to commit misdeed. She had seen nail mark on the neck of the victim, for which the victim suffered pain.

13. PW 3 Ranju Gowala deposed that on the day of incident, at around 3.40/4 p.m., while she was at home, hearing cry of the victim she came out

from home and on being enquired the victim, she reported that when she went to collect some leaves and dry branches of tree near "Rangamancha", at that time a boy who was sitting in the veranda of "Rangamancha", gagged her mouth and pressing her neck took her to the nearby jungle and on raising alarm, the accused left the place.

During cross, she stated that the victim did not mention the name of any person. She only stated that she was attacked by a boy. She further stated that being a physically handicapped one, the victim sometimes fell down and in those situations, she sought for help of others nearby her.

14. PW 4 is the victim herself. She stated that on the day of incident, at about 4 p.m. she went towards "Rangamancha" to collect some dry leaves of coconut for making broom. At that time accused was sitting in the verendah of "Rangamacha". Accused took her towards jungle, pressed her neck and fell her down in the jungle. Then she raised alarm and informed the matter to PW 3 and then to her mother. She proved her statement u/s 164 Cr.P.C as Ext. 2.

During cross, she stated that as she is physically handicapped, so she had to face some difficulties when she got up or standing and in that situation she sought for help of others. She admitted that the road near the "Rangamancha" is up and down and while going by the said road, she found some difficulties. She further stated that when she went to collect leaves of coconut trees, she fell down on the ground. At that time immediately accused came near to her and tried to help her. She further stated that she fell down near the "Rangamancha" but her clothes did not get dirty. She also admitted that the accused did no misdeed to her.

- 15. PW 5, Rinku Gowala testified that on the day in the evening he heard from his mother that when the victim girl went to collect leaves of coconut tree near "Rangamancha", accused took the victim girl towards jungle but he did not know about the actual incident.
- 16. PW 6 Dr. Geetumoni Sonowal, the Medical Officer deposed that on 07-08-2017 the victim was produced before her for examination but the guardian of the victim refused to examine her.

17. PW 7 ASI Suren Phukan, the Investigating Officer stated that on 06-08-2017 on being entrusted to investigate the case, he visited the place of occurrence, drew the sketch map of the place of occurrence vide Ext.4, recorded the statement of the witnesses, arrested the accused, sent the victim for medical examination, got recorded the statement of the victim u/s 164 Cr..P.C. and on completion of investigation, laid chargesheet against the accused Sankar Gowala u/s 341/352 of IPC read with section 8 of POCSO Act.

During cross, he also stated that the victim was physically handicapped and she cannot walk properly. He further stated that though he sent the victim girl for medical examination, but she refused saying that it is not required. He did not seize any document regarding the age of the victim girl in this case.

- Regarding allegation of sexual assault the victim's parents PW 1 18. and PW 2 stated that on the day in the afternoon at about 3.30/4 p.m. the victim went to collect coconut leaves near "Rangamancha" and after some time she came crying and reported her aunty (PW 3) that when she went for collecting branches of tree, accused gagged her mouth and pressing her neck had taken her to the nearby jungle situated near "Rangamancha" and thereafter when he tried to lay her down, she screamed and then the accused left the place. PW 3, the aunty of the victim, whom the victim reported first about the incident, stated that on the day at about 3.40/4 p.m. when she was at home, hearing cry of the victim, she came out and seeing the victim when she asked her, the victim reported that when she went to collect some branches of tree near "Rangamancha", then a boy who was sitting in the veranda of "Rangamancha", gagged her mouth and pressing her neck, had taken her to the nearby jungle. According to this witness, the victim did not mention the name of any person but only stated that she was attacked by a boy.
- 19. Though PW 1 and PW 2 alleged that the accused pressed the neck of the victim and they had seen injury mark over the neck of the victim but they being parents refused to get examine the girl. The evidence of the victim's father that police seized one chappal of the accused from the place of

occurrence is also not supported by any witness including the Investigating Officer. Moreover, though PW 1 stated that he had seen mud stain in the wearing apparel of the victim but the victim herself did not support the same, rather she stated that due to physical disability, she herself fell down and her clothes did not get dirty.

- 20. In the case admittedly the victim is physically handicapped one and sometimes she fell down while walking and in those situations she sought for help of the nearby person to get up. Though the victim (PW 4) in examination-in-chief testified that on the day when she went towards "Rangamancha" for collecting leaves, the accused who was sitting in the verandah of "Rangamancha", took her towards jungle, pressed her neck and made her lay upon the jungle but in the same breath during cross, she clearly stated that due to physical disability she suffered from difficulties when she got up or stand up and in those situations she sought for help of others. She further stated that the road near "Rangamancha" is up and down and as such she faced difficulties while walking by the road and when she proceeded to collect leaves of coconut trees on the day, she fell down on the ground. Seeing her falling, the accused immediately came near to her and tried to help her. She also admitted that the accused did not commit any misdeed to her.
- 21. Here in the present case, the evidence of the victim reveals that due to bad condition of the road by which she proceeded to collect branches of trees on the day, she fell down and seeing her in that situation the accused came to her and tried to help her. The victim also admitted that the accused did no misdeed to her. The victim's mother also categorically stated that the accused did not commit any misdeed to her victim daughter. The examination-in- chief of the victim regarding gagging her mouth and pressing her neck and made her fall down upon ground clearly negates during cross-examination where she stated a complete different story. When there is no eye witness, victim's evidence during cross that the accused did nothing, rather he only helped her while she fell down creates doubt about the prosecution version regarding alleged sexual assault.

- 22. Considering the evidence of prosecution witnesses in totality particularly the evidence of the victim and other surrounding circumstances as discussed above, it is clear that the allegation against the accused Sankar Gowala have not been established beyond all reasonable doubt and the accused is entitled to benefit of doubt.
- 23. Accordingly, accused Sankar Gowala is acquitted on benefit of doubt from the charge u/s 8 of POCSO Act and set him at liberty forthwith. The accused being in jail-hajot, he is allowed to go on P.R. bond of Rs. 10,000/-.
- 24. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **29**th **day of March, 2019.**

(I.Barman) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(I.Barman) Special Judge, Sonitpur,Tezpur.

Prosecution witnesses.

1. PW 1 : father of the victim and informant.

2. PW 2 : mother of the victim3. PW 3 : aunty of the victim

4. PW 4 : victim

5. PW 5 : Rinku Gowala.

6. PW 6 : Dr. Geetumoni Sonowal, M.O.

7. PW 7 : ASI Suren Phukan, I.O.

8.

Exhibits.

Ext. 1 : FIR

Ext. 2 : 164 Cr.P.C. statement of the victim

Ext. 3 : Medical report.

Ext. 4 : sketch map

Ext. 5 : Charge sheet.

(I.Barman)
Special Judge,
SONITPUR: TEZPUR