IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present: Shri A. Hazarika, A.J.S.,

Sessions Judge,

Dhemaji,

JUDGMENT IN SESSIONS CASE NO. 18 (DH) of 2015.

(G.R. Case No.820/2014 (GMK); Gogamukh P.S. Case No.195/2014 Under Sections-376(D)/109 of the Indian Penal Code)

The	State	of	Assam
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- Versus -
- (1) Shri Kalyan Morang
- (2) Shri Prasanta Khanikar

.....Accused Persons

Committing Magistrate:-

Shri L.K. Sarmah,

Judicial Magistrate,1st Class,

Dhemaji.

Appearance:

Shri P.C. Boruah,

Public Prosecutor

Shri N. Buragohain,

Defence Counsel

Date of committal

Date of Charge

Date of prosecution evidence

Date of recording Statement of Accused

Date of defence evidence

Date of arguments

Date of Judgment

.....For the State

.....For the Accused persons

: 20-02-2015

: 30-04-2015.

: 14-07-2016, 29-11-2016.

: 07-01-2017.

: Nil.

: 17.03.2017

: 30-03-2013.



JUDGMENT

Case of the Prosecution:

- 1. The prosecution case in brief is that on 29-11-2014 complainant- Smt. Jatshna Barman, W/O Basanta Barman, R/O VIII.- Gogamukh Maj Gaon , P.S. Gogamukh, District- Dhemaji lodged an FIR to the effect that on 28-11-2014 at about 6 P.M. the accused persons- Shri Kalyan Morang and other two unknown friends of Kalyan Morang came to the house of her son-Dilip Barman and accused Kalyan Morang and his another unknown friend committed rape on her minor grand daughter-Smti 'X', aged about 8 years, gagging her mouth with cloth. It is alleged in the FIR that in order to commit the crime, the accused-Kalyan Morang and his friends drove out the complainant from the house. It is also alleged in the FIR that the accused-Kalyam Morang and other two unknown persons managed Smt. Maina Barman, second wife of Dilip Barman, by giving Rs.600/- to her. On the basis of the said FIR a case being Gogamukh P.S Case No 195 of 2014 was registered u/s 376 (D) of the Indian Penal Code read with Section 44 of the POCSP Act.
- 2. Thereafter, the case was investigated and on the basis of the materials available, charge-sheet was submitted under Sections- 376(D)of the Indian Penal Code r/w sec. 4 of Protection of Children from Sexual Offences Act, 2012 r/w Sec. 109 of I.P.C. against the accused persons- Shri Kalyan Morang, Prasanat Khanikar , Shri Bhaskar Doley and Smt. Maina Barman
- 3. The case being exclusively triable by the Sessions Court the same was committed to the Court of Sessions, Dhemaji by the learned Judicial Magistrate, $1^{\rm st}$ Class, Dhemaji on 20-02-2015.

Charge:

4. Charge Under Section 4 of the Protection of Chiuldren from Sexual Offences Act, 2012 was framed against the accused persons-Shri Kalyan Morang and Shri Prasdanta Khanikar by the court on 30-04-2015 to which the accused persons pleaded not guilty and claimed to be tried. The other accused Shri Bhaskar Doley and Smt. Maina Barman were discharged by the Court.

Evidence:

- 5. To prove the guilt of the accused, Prosecution examined three witnesses.
- 5.(a) PW-1 is the victim 'X'. She has stated that she knew both the accused persons present in the dock. At present, she is aged about 10 years. Her grandmother had filed the case against both the accused persons. Her grandmother tutored her to give statement before the police as well as in the court. The accused persons did nothing to her

This Defence declined to cross examine the witnesses

5.(b) PW2 is Shri Dilip Barman who has evidenced that he knew the accused persons present in the dock. Victim 'X' is his daughter who is now 10 years old. She is reading in Class-IV. The incident was of about 2 years back. Accused-Kalyan Morang and Prasanta Khanikar came to his house. Bhaskar Doley also came to his house. He, Bhaskar went to see another house. Accused Kalyan and Prasanta remained in his house. After a short while, he came back home and then his mother informed him that Kalyan and Prasanta committed rape on his daughter 'X'. On being asked, victim 'X' told him nothing. His mother had filed the case at the police station. Police came for investigation and recorded his satatement. Victim's medical was done.

During the cross-examination, this witness has stated that his daughter 'X' had not told him that the accused persons committed rape on her. Later on, he came to know that his mother had filed the case falsely.



5 (c).PW-3 Smti Jatshna Barman has deposed that she knew the accused persons present in the dock. She also knew the victim 'X'. She is her grand-daughter. She (PW3) had filed the case. Her neighbours told her that while she was absent in her house, the accused persons raped the victim 'X'. When she asked the victim X about it, she replied that nobody had done anything to her. She gave her thumb impression in the FIR. She does not know what was written in the FIR. At the time of incident, victim 'X' was 8 years old.

Defence declined to cross-examine PW3.

Statement of Accused under Section 313 Cr.PC & Defence Evidence:

6. The statement of the accused persons Shri Kalyan Morang and Shri Prasanta Khanikar was recorded under Section 313 of the Code of Criminal Procedure on 07-01-2017 where the accused persons denied the charge and stated that they are innocent.

Point For Determination

7. The moot point for determination is as to whether the accused persons- Shri Kalyan Morang and Prasanta Khanikar committed penetrative sexual assault on the victim 'X' and thus committing an offence punishable under Section 4 of the Protection of Children from Sexual Offences Act?

Discussion and Conclusions

- 8. I have heard Shri N. Buragohain , the learned counsel for the defence as well as the Shri P.C. Boruah, the learned Public Prosecutor. I have also perused the evidence and other materials on record.
- 9. On perusal of the evidence on record, it is seen that PW-1 (X) the victim has clearly evidenced that the accused persons had not done anything with her and that her grand-mother (PW3) had filed a case against the accused and also told her what to say before the police and the Magistrate. Even the evidence of PW2, father of the victim (PW1) would go to show that even though the accused Kalyan Morang and Prasanta Khanikar had gone to his house along with one Bhaskar Doloi and he had gone out with said Bhaskar Doloi, while Kalyan and Prasanta had stayed back in his house. He has also on asking the victim 'X', she had not told him anything. PW3 the informant who is the grand-mother of the victim 'X', has evidenced that the neighbours had told her that while she was absent, the accused persons had raped the victim 'X'. But when she asked the victim 'X' herself, she was told that nothing was done to her. From the aforesaid evidence of the witnesses, it is seen that the evidence of PW3 who had filed the FIR, is based upon hear-say and cannot be believed. Moreover, PW1 the victim herself categorically stated that the accused had not done anything with her. Even the evidence of PWs- 2 and 3 clearly indicates that the victim had told them that the accused did not do anything with her. Therefore, it may safely be concluded that the FIR was filed without going through the fact. PW3 has also stated that she does not know what is written in the FIR and she only gave her thumb impression. An illiterate person having filed the FIR without knowing the contents thereof, the case of the prosecution, cannot be held to hold any ground. However, considering the age of the informant who is about 70 years, this Court refrained from passing any order implicating the informant.

It may also be noted here that the prosecution has not laid any other evidence that may indicate the complicity of the accused in the commission of the said offences. Therefore, in view of the absence of any cogent, reliable witnesses supporting the case of the prosecution, and considering the evidence of the victim as well as other prosecution witnesses who have clearly stated that the accused had not committed any offence, this Court is of the considered view that the prosecution has failed to prove its case against the accused persons.



10. On perusal of the evidence on record and in view of the aforesaid discussion this Court is of the considered opinion that the prosecution has failed to prove the charge u/s 4 of the POCSO Act against the accused Shri Kalyan Morang and Shri Prasanta Khanikar.

Order:

- 11. The accused persons $\,$ Shri Kalyan Morang and Shri Prasanta Khanikar are acquitted of the charge u/s 4 of the POCSO Act $\,$.
- 12. Bail bond executed by the accused person and surety are extended for next six months as per the provision of Section 437 A of Cr.P.C.
- 13. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357A Code of Criminal Procedure.
- 14. Judgment is pronounced in open court. Case is disposed on contest

Given under my hand and seal on this the 30th day of March, 2017.

(A. Hazarika)

Dhemaji.

Dictated & corrected by me :-

(A. Hazarika)

Sessions Judge,

Dhemaji.

Transcribed & Typed by me :-

(B.K. Buragohain)

Steno. Grade-I.

Appendix:

Prosecution Witnesses

P.W. 1 - the victim 'X'

P.W. 2 - Shri Dilip Barman ,

PW-3 - Smt. Jatshna Barman (complainant)

Defence Witnesses:-

None

Prosecution Exhibits:

None

Defence Exhibits:

None

(Shri A. Hazarika)

Sessions Judge,

Dhemaji.