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. 16/2016

corresponding to GR Case No. 03/2016 & Borpathar Police Station Case No. 01/2016

Under section 376 of the IPC

State of Assam

Versus

Shri Rajiv Munda

Name of informant/complainant:

Sri Krishna Nandi

Son of Late Hare Krishna Nandi

Village: Khakrajan

PS: Borpathar

District: Karbi Anglong, Assam.

Name of the accused person facing trial:

Shri Rajiv Munda

Son of Shri Tarun Munda

Village: Rong Bong 1 No Bogamati

PS: Golaghat

District: Golaghat, Assam.

Advocates appeared:

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

For the defence : Miss Rubi Sarkar

Date(s) fixed for Argument : 26.08.2019/03.09.2019

Date (s) fixed for Judgment : 11.09.2019

JUDGMENT

- 1. It is a case of penetrative sexual assault alleged to have been committed by the accused person upon the victim.
- 2. The prosecution case in brief is that on 02.01.2016 the informant named above lodged a written ejahar with Borpathar Police Station stating inter alia that on 10.01.2016 at about 8: 20 PM the accused took away his victim on call from the picnic going on in the house of one Topu Nag to a place where bamboos were grown and raped her. On receipt of the ejahar, O/C Borpathar Police Station registered a case vide its Police Station case No. 01/2016 under section 4 of the POCSO Act and started investigation. On completion of investigation, the concerned investigating officer submitted the charge-sheet under section 376 of the IPC against the accused person. Hence the prosecution case has come up.
- 3. On completion of appearance of the accused person, copy was furnished to him and the case was committed to this court. On perusal of the case record along with case diary and after hearing learned lawyers of both sides, I found sufficient grounds for presuming that the accused person committed the offences under section 4 of POCSO Act. Accordingly, the charge was 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. The case was renumbered as POCSO Case.
- 4. During trial, Prosecution has examined as many as 7 (seven) witnesses including medical officer and

investigating officer. The accused person has been examined under section 313 CrPC. The defence has examined none. Plea of defence is of total denial.

5. **Points for determination is:**

Whether the accused person on 01.01.2016 at about 8:20 PM committed penetrative sexual assault upon the victim in jungle made with bamboos situated at Khakrajan under Borpathar Police Station and that thereby committed an offence punishable under section 4 of the POCSO Act?

<u>6.</u> <u>Decisions and reasons thereof:</u>

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 to 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 on record.

7. For attracting section 4 of the POCSO Act, the victim needs to be a child. Child is defined in the section 2

- (d) of the POCSO Act. According to the aforesaid section, to be a child a person needs to complete 18 years. PW-1 is the father of the victim and according to him, at the time of occurrence, the victim was 16 years. PW-3 is the mother of the victim whose evidence is silent as to how old the victim was at the time of occurrence. PW-7 is the medical officer who examined the victim on 02.01.2016. Ext-5 is the medical report which shows that at the time of occurrence the victim was above 18 years. In view of the discussion made, I have come to conclusion that at the time of occurrence the victim was above 18 years.
- 8. According to PW-1, coming home back, the victim told him that while she was coming home back, the accused forcibly took away to the jungle near his house by gagging her mouth and raped her therein. In the cross-examination PW-1 has admitted that the victim came home back at 11:30 PM. PW-4 is Smt Minu Horo to whose house the victim came on fateful night. Her evidence shows that the victim left their house at 10:30 PM for her house. In the crossexamination she has stated that her brother wanted to accompany her up to her house but she alone went out for going home back. From the crossexamination of PW-5, it appears that the accused person sometime used to visit the house of the informant. Now it has become crystal clear that the accused was known to the victim.
- 9. There was none who saw the occurrence. Hence the entire case lies on the evidence of the victim. It is evident that the victim died during trial. PW-7 is the medical officer who examined the victim on

02.01.2016 immediate after occurrence. The occurrence to place on the night of 01.01.2016. On examination of the victim sign of recent sexual intercourse and injury were not found. Spermatozoa was not detected in vaginal swab. From the discussion made above, it has become crystal clear that there is doubt that there was penetration and that the accused made any force upon the victim. It is found that a different story was depicted in Ext-1. Taking all aspects I am of the opinion that non-examination of the victim is fatal to the prosecution and that the prosecution is not free from doubt.

ORDER

- 10. In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubts. Hence on benefit of doubts, the accused person Shri Rajiv Munda is hereby acquitted from the charge brought against him and let him be set at liberty forthwith. The bail bond shall be stood cancelled after 6 (six) months.
- 11. Accordingly this case is disposed on contest.
- <u>12.</u> Given under hand and seal of this court today, the 11^{th} day of September, 2019 at Diphu, Karbi Anglong.

Dictated and corrected by me.

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

APPENDIX

Prosecution Witnesses:

PW1- Shri Krishna Nandi

PW2- Shri Rohit Horo

PW3- Smti Banu Nandi

PW4- Smti Minu Horo

PW5- Shri Biren Bhumij

PW6- Shri Ramohan Nag

PW7- Dr. Atreyee Goswami

Defence Witnesses: Nil

Prosecution Exhibited:

Ext.1- Ejahar

Ext.2- Statement of the victim

Ext.3- Sketch map of the PO

Ext.4- Charge Sheet

Ext.5- Medical Report

Defence Exhibited: Nil

Special Judge, Diphu, Karbi Anglong, Assam.