IN THECOURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

Sessions Case No. 114/2016

(Under Section 380 of IPC R/W section 8 of POCSO Act)

Present: Md. M. Ahmed,

Sessions Judge

Kamrup(M), Guwahati

State of Assam

- Vs -

Sri Joay Boro.

.....Accused

Appearance for the Parties:

Advocate for the State : Mr. H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Mr. J. Islam, learned Advocate

Date of recording evidence : 29.07.2016, 08.09.2016, 14.12.2016,

04.02.2017.

Date of Argument : 10.03.2017

Date of Judgment : 27.03.2017

JUDGMENT

1. Prosecution case has its genesis to an FIR lodged by one Arup Kalita of Panikhaiti Ekarabari under Pragjyotishpur P.S; according to the informant, Miss 'X'real name is withheld to screen her from infamy, then aged about 13 (thirteen) years was alone in the house on 29.01.2016; taking advantage of such a

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favourable condition and solitude of that place accused Sri Joay Boro, the next door neighbor came to the house of the informant, had interaction with her; got her intoxicated by giving her a glass of wine and subjected her to sexual assault when the victim became almost semi conscious. Thereafter, the said accused by breaking open the lock of Godrej and Alimirah decamped with booty of Rs. 10,000/-(Rs. ten thousand). This incident occurred at around 5.00 P.M, on the eventful day. When the informant returned back home, he found the victim lying on the floor inside the house in an unconscious condition and then he immediately, provided her first aid treatment; by that time darkness descended and as because the PS lies a distance away from his house; he thought it better to pass the night and on the day break ,he went to Panikhaiti OP under Pragjyotishpur PS and lodged an FIR there. The in-charge of the said Police Outpost entered the gist of allegation in the General Diary and forwarded the said written ejahar to O/C Pragjyotishpur PS for favour of registering a case under proper section of law.

- 2. Accordingly, on receipt of the said written ejahar O/C Pragjyotishpur PS registered a case U/S 380 of IPC R/W section 8 of POCSO Act, against the aforenamed accused; investigation was set in motion. During the course of investigation ,the I/O, visited the place of occurrence, prepared a sketch map of the place of occurrence, recorded the statement of the victim and other material witnesses, took the victim to GMCH for medical examination, arrested the accused having found abundance of materials against him showing his complicity in the alleged offence and caused his production before the learned Trial Court below, wherefrom he was remanded to judicial custody. Thereafter, the I/O having completed the investigation and having found sufficient incriminating materials showing complicity of the aforenamed accused in the alleged offence, submitted charge-sheet with allegation of offence punishable U/S 380 of IPC R/W Section 8 of POCSO, Act. At the time of submission of charge-sheet, the accused was cooling his heels behind the bars. Subsequently, he was let off on court bail. The accused was furnished with copies of relevant documents as mandated U/S 207 of Cr.PC.
- **3.** Thereafter, my learned predecessor in court, having heard respective submissions so advanced by learned counsel of both the sides and basing upon the materials on record, framed charge U/S 380 of IPC R/W section 8 of POCSO

Act, 2012, and read over and explained the contents therein to which the aforenamed accused pleaded not guilty and claimed to be tried.

Points for Determination:

- **4.** In this case, it is to be determined if on 29.01.2016 at around 5.00 P.M. at Panikhaiti Ekarabari under Pragjyotishpur P.S. accused committed theft in respect of Rs. 10,000/-(Rs. Ten thousand) in the dwelling house of the informant Sri Arup Kalita and at the same time, day and place, he committed sexual assault upon Miss 'X' daughter of the informant, then aged about 13(thirteen) years.
- 5. In this case ,the prosecution has examined as many as 9 PWs. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the aforenamed accused was subjected to examination as warranted U/S 313 of Cr.PC, in respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. He has further claimed that he was in love with the victim and that relationship was continued, since long and it has been agreed by both the sides that when the girl attains majority, her marriage with him will be solemnized with the consent of parents of the victim and his family members.
- 6. Thus from this version of the accused, it has appeared that the accused has claimed that there was a love affair in between himself and the victim and it has been continued since, long and as because the victim is underaged, so he could not marry the victim. Further, in due course, he will marry her since she attains the age of majority with the consent of her parents.
- **7.** I have heard the argument so placed by learned counsel of both the sides, considering the evidence on record and come to the following decision.

Decisions and reasons thereof:

8. In this case the prosecution has claimed that the victim was then aged about 13 (thirteen) years, when the alleged occurrence took place; to prove her age ,the prosecution has not tendered any documentary evidence except the evidence of the doctor who subjected the victim to ossification test to determine the age of the victim. This doctor was examined by the prosecution as PW 9. Upon attentive analysis of the evidence of this doctor, it has transpired that he on

31.01.2016, examined Miss 'X' the victim girl at GMCH, on police requisition vide Panbazar PS Case No. 19/16 U/S 8 of POCSO Act. Being identified by one woman home guard and in presence of female attendant Smt. Uttara Das and it was found that the age of the victim at the relevant time was in between 14 (fourteen) years to 16 (sixteen) years. However, the doctor has failed to detect any evidence of recent sexual intercourse on the body of the victim; neither he could detect any injury on any part of her body. The evidence of the doctor is not challenged by the defense side. Thus from his evidence, it stands settled that the victim was then aged between 14 (fourteen) to 16(sixteen) years, at the relevant time.

9. Now drawing our attention to core allegation so leveled by the prosecution in the instant case, it is seen from the evidence of victim girl that she does not support the prosecution allegation on specific point, that she was subjected to sexual molestation by the aforenamed accused on the eventful day in her house rather, she narrated completely different story by deposing as PW2. She has stated that on the eventful day, while she was alone in her village house the accused come there under influence of liquor and he had a verbal fight with the victim on the matter of his dilly-dallying of the date of marriage. On that day, her parents were not in the village house. She used to reside there under the total tutelage of her grandmother; her parents were resideing in a rented house at Guwahati. It so happens that on the eventful day, her grandmother left her alone in the house and went to Guwahati at Chandmari to visit her parents, who were living in a rented house. The victim has further admitted that she was in love with the accused and there was a talk of their marriage in between both the family. However, at that time she was underaged and because of that her marriage date was not fixed by her parents; and when the victim was found that marriage date is getting delayed, then she confronted the accused on the eventful day when he happens to visit her house in inebriated condition. Then they both indulged in a war of words. The victim felt hurt on being so rudely treated by the accused who was her lover, and then she immediately related this matter to her parents over phone. Her parents came back home and in anger her father lodged an FIR at the PS against the accused. She remains very specific to the point that the accused has not molested her sexually; there was simply exchange of heated words and the matter cool down the moment as soon as the accused left the scene. However, the victim feeling hurt was fuming and she without giving any second thought, made telephonic call to her parents which resulted into a case being registered at the PS.

- 10. Thus from the evidence of the victim, it is apparent that the victim has not supported the prosecution story on the point that the accused came to the house of the informant, sexually assaulted her and looted away the certain amount by breaking open the Godrej and Almirah from inside the house. The evidence of the parents of the victim goes on the same line. Both of them have supported the version of the victim by stating inter-alia that on the eventful day, when the victim was all alone in the village house, the accused come there under influence of liquor, had wordy duel with the girl over delaying in fixation of marriage; in frustration their daughter reporting this matter to them and subsequently, filing of FIR. Both the witnesses have emphatically stated that this case arose out of a misunderstanding; at subsequent stage the matter was settled to the satisfaction of both the sides and it was further agreed that marriage between the victim and the accused would be solemnized in due course when the victim comes of proper age.
- **11.** That being the position, this court is of opinion that the prosecution has failed miserably to establish the guilt of the accused for the alleged commission of offence punishable U/S 380 of IPC R/W section 8 of POCSO Act, beyond all shadows of doubt. In the result, the accused is found not guilty and is acquitted and set at liberty forthwith.
- **12.** The bail bond of the accused stands discharged.
- **13.** Signed, sealed and delivered in the open court on this 27th day of March, 2017 at Guwahati.

(M. Ahmed) Sessions Judge, Kmrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Ext-1: FIR.

Ext-2: Printed form of FIR

Ext-3 : The statement recorded under Section 164 of Cr.P.C. Of the

victim

Ext-4 : Charge-sheet. Ext-5 : Medical report.

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1 : Sri Arup Kalita.

PW-2 : Miss. Niha Kalita.

PW-3 : Mrs. Jonali Kalita.

PW-4 : Sri Pranjal Boro.

PW-5 : Smt. Gita Boro.

PW-6 : Smt. Kalpana Kalita.

PW-7 : Smt. Dulu Boro.

PW-8: SI Utpal Ch. Roy.

PW-9 : Sri Amar Jyoti Patowary.

(F) Defense Witnesses : Nil

(G) Court Witnesses : Nil.

(M. Ahmed) Sessions Judge, Kamrup(M), Guwahati