## IN THE COURT OF SESSIONS JUDGE ......CACHAR.

### SPCIAL( Pocso) CASE NO . 9 of 2016

(U/S.8 Pocso.Act)

Present:-Shri K. Choudhury, LL.M., Special Judge, Cachar, Silchar.

State of Assam ......Complainant.

#### -Versus-

••

Judgment pronounced and delivered on:- ......06-10-2016.

Counsel Appeared

For the State : - Mr. S. Dutta, Ld. PP

For the Accused : - Mr. D. Sen Gupta, Ld. Advocate

#### *JUDGMENT*

1. Prosecution case in brief is that on 12-03-16 at about 11.00 p.m. taking the advantage of the absence of the husband of the informant the accused entered into their house breaking fence thereof. The accused then with intention to commit rape embraced the minor daughter of the complainant here in below referred as victim and torn her frock. On her raising alarm the informant woke and raised alarm. He then fled away. Nearby people came and managed to apprehend and handed over him to

police. Accordingly FIR was lodged. The same was registered as Dhalai P/S case No.78/16 u/s 457IPC.On completion of investigation I.O. submitted charge sheet against the accused U/S 457 IPC read with Section 8/18 of POCSO Act.

- 2. Learned S.D.M(S) on production of the accused furnished all necessary police papers to him and committed the offence. This Special Court after hearing both sides and considering materials on record framed formal charges against the accused U/S 457 IPC and U/S 8 of POCSO Act. 2012, which were read over and explained to which the accused pleaded not guilty. Hence, trial begun.
- 3. To prove the case prosecution examined as many as five witnesses including the I/O. The defence plea is that the informant to get the property of her sister, the mother of the accused falsely lodged FIR against him. During examination u/s 313 Cr.P.C. the accused pleaded his innocence with the like plea.
- 4. Now, point for determination is whether the accused, under the facts and circumstances of this case, committed any offence of criminal trespass within the meaning of section 457 IPC and also offence of sexual assault within the meaning of section 8 of the POCSO Act. 2012,
- 5. To decide the above points I have heard learned counsel of both sides and perused the evidence on record.

My findings and decisions thereof are given below:

PW. 1 – Smti. Bodorun Nessa the mother of the victim deposed the age of the victim as 16 years. The victim discontinued her study about ten years back by reading in Class-II. The house of the accused is situated behind their house. About five months back at one night while after taking meal was sleeping with her younger daughter aged about three years victim was also sleeping in a separate bed near to her. On that night at about 11 p.m. the

accused entered into the house and used force on the victim. She hearing alarm woke up and rescued the victim from the grab of the accused who then fled away. Hearing alarm her sister Iratun Nessa and uncle Mokoddas and many others came to the P.O. The matter was reported to them. She further deposed that the accused entered in the house by breaking the bamboo fencing. During investigation the torn cloth of the victim was shown to the I.O.

In the cross-examination of P.W.1 it has come out that the accused got married several times and at the material time was residing with his one wife and one daughter of eight months. The victim is the 2<sup>nd</sup> daughter of the informant. The age of her eldest, third fourth daughters are 18,13 and 8 years respectively. The age of her eldest son is 17 and 2<sup>nd</sup> one is of 12 years. It thus appears from her cross-examination is that defence though made an attempt to establish the victim as major but failed. According to the defence the informant wanted to grab the mother's property of the accused which the P.W.1 categorically denied. It has also come out in the cross-examination that the eldest daughter already got married and at the time of alleged incident the husband of the P.W.1 was engaged in brick factory near to their house and eldest son was at Aizwal in a Cement factory.

- 6. PW. 2 Smti. Iratun Nessa deposed that about six months back at about 9.00 p.m. the accused entered into the house of the victim by breaking fence and used force on the victim with bed intention. Hearing alarm she went to the P.O. and found the accused flee away from inside the house. The victim reported that the accused with bed intention torn her cloth. Police seized the torn cloth.
- 7. PW. 3 the victim deposed that about five months back at one night while she was sleeping in her house along with her younger sister namely, Dilwara Begum aged about eight years suddenly found the accused pulling her leg She then raised alarm. Her mother came. The accused then came pushing her mother fled away. By this time many other neighbouring people including her maternal grand father Mokoddas Ali, aunt Iratun Nessa came. During the investigation he was examined by doctor of Dholai Hospital. She did not sustain any injury. Due to the act of the accused her frock got torned. The frock was shown to the police. She during the cross-examination shown the torn cloth to the Court and denied the suggestion that she intentionally tearing the same shown the same to the Court. She gave topography of the Place of occurrence.

In the cross-examination of the aforesaid three witnesses the defence may try to establish the land dispute between the informant and the accused and denied the positive evidence by putting mere suggestions. In the

cross-examination of P.W.2 it has come out that the accused is a drunker and at the material time he was in a drunken condition.

- 8. PW. 4 Sri Mridul Deori a doctor of Dholai PHC deposed that on 13-03-16 on police requisition examined the victim produced by police of Lailapur O.P. No injury was found after examination. Ext-1 is the police requisition. Ext-1(1) is his report with signature. He is not cross-examined by the defence.
- 9. PW. 5 Sri M. Babu Singha is the I.O. who deposed that on 13-03-16 while he was posted at Lailapur Police patrol post received written ejahar from the complainant Giving G.D. entry forwarded the ejahar to Dholai P.S. and in the meantime initiated the investigation by opening MCD. Ext-2 is the FIR and Ext-2(1) is his signature. He further deposed that he visited the P.O. recorded statement of witnesses, drew sketch map of the P.O. In the meantime case was registered as Dholai P.S. case No. 78/16 U/S 457 IPC and 8 of POCSO Act. He was entrusted to investigate the case. Ext-3 is the sketch map. He seized one frock of the victim vide Ext-4. The same was given zimma to the complainant. Accused was apprehended. The victim was got medically examined. Ext-5 is the charge sheet submitted by him.

In his cross-examination it is stated that Public apprehended and produced the accused to the police. He denied the suggestion that he did not visit the P.O. and drew the sketch map at the instance of the complainant. He clarified that P.O. was a tilla land having small katchha houses. Accused used to reside in one of the said kachha houses. He confirmed some omission to the effect that P.W.1 did not state before him that she along with her younger daughter was sleeping and did not mention the name of the person who came hearing alarm.

- 11. From the above evidence and from the entire evidence on record it reveals that the accused is the son of sister of the accused and he used to reside in the same tilla land of the complainant in a separate house.
- 12. During hearing learned P.P. has submitted that there is no contradiction, discrepancy or any discrepancy or any omission with regard to any material point or circumstances of this case. Therefore, Court can rely upon the corroborative evidence of the witnesses and there is no reason to disbelieve the testimony of a minor girl. It is further submitted that although the defence tried to establish there was some land dispute but failed to substantiate the same by bringing some cogent materials in the cross-examination of witnesses. On the contrary learned defence counsel has submitted that non examination of other daughters namely, Dilwara Begum is fatal for the prosecution in as much as according to the P.W.1 and 3 Dilowara

Begum was sleeping with the P.W.1. It is further submitted that there is no reason to disbelieve the plea of land dispute on the ground that maternal land of the accused is also situated adjacent to the house of the informant.

- 13. It is evident that the mother of the accused is the eldest sister of the informant and died about twenty years back. Had there been any land dispute between the informant and the accused sufficient materials could be brought in the cross-examination but except mere suggestion nothing could be brought. Evidently the victim is a minor girl and this fact is not disputed. It is difficult to believe that a minor girl and her mother who is having other minor daughters could jeopardize the future of minor victim girl with a false plea. Evidence of P.W.2 that the accused was a drunker and he was at the material time in a drunken condition as come out in the cross-examination also fortifies the prosecution case.
- 14. In view of the above discussion and evidence in its entirety under the facts and circumstances of the case I do not find any reason to disbelieve the corroborative evidence of the material witnesses. Therefore the act of the entering into the house of the victim at very night with the intention to commit offence of sexual assault with the victim established the offences U/S 457 IPC and his act of using force and tearing of frock of the victim comes within the purview of Sec.8 of POCSO Act.
- 15. From the above discussion, contentions and consideration of the entire evidence on record it is held that prosecution has been able to prove its case beyond all reasonable doubt U/S 457 IPC and U/S 8 of POCSO Act. Accused is thus held guilty and convicted accordingly.
- 16. Heard the accused on the question of sentence. He has stated that he has having wife and daughter of 8-10 years old and thus prayed for lenient punishment.
- 17. Having due regard to the above and all other aspect and considering the facts and circumstances of the case I would like to sentence the accused with some leniency. So I convict and sentence the accused U/S 457 IPC to undergo Rigorous Imprisonment (R.I.) for a period of one year and fine of Rs. 1000/- and in default further undergo R.I. for one month. He is also convicted and sentenced U/S 8 of POCSO Act to undergo for a period of one year along with fine of Rs. 1000/- and i/d shall further undergo for a period of one month. Both the sentences will run concurrently. The period of custody shall be set of.
- 18. Fine amount if realized shall be paid to the victim as compensation.

19. Copy of the Judgment shall be furnished to the accused free of cost as per provision of Sec. 363 Cr.P.C. and also be forwarded to the District Magistrate as per provision of Sec. 365 Cr.P.C.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this  $6^{th}$  day of October 2016.

Dictated and corrected by

Special Judge, Cachar, Silchar.

(K. Choudhury) Special Judge, Cachar, Silchar

Transcribed by P. Dey,

Stenographer

# IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR

## Spl. POCSO Case No. 09 of 2016.

# **APPENDIX**

(A) PROSECUTION WITNESSES: -			
PW. 1 – Smti. Bodorun Nessa.  PW. 2 – Smti. Iratun Nessa.  PW. 3 – Smti.Amona Begum.  PW. 4 – Sri Mridul Deori.  PW. 5 – Sri M. Babu Singha.			
(B) <u>DEFENCE WITNESSES</u> : - Nil			
(C) <u>COURT WITNESSES</u> : - Nil.			
(D) PROSECUTION EXHIBITS: -			
Ext. 1	_	Police Requisition for medical exa	mination.
Ext.1(1)		Report of P.W.4.	
` '		Signature of P.W.8	
		F.I.R.	
Ext. 2 (1)	_	Signature of P.W.5.	
		Signature of the then O/C.	
Ext. 3	_	Sketch Map.	
Ext. 3 (1)	_	Signature of P.W.5.	
Ext. 4	_	Seizure List.	
		Signature of P.W.5.	
Ext. 5	_	Charge sheet.	
Ext. 5 (1)	_	Signature of P.W.5.	
•			
(E) MATERIAL EXHIBITS: - NIL.			

(F) <u>DEFENCE EXHIBITS</u>: -

(K. Choudhury) Special Judge. Cachar, Silchar.

NIL.