IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special 20/2018 corresponding to GR Case No.647/2018 & Khatkhati Police Station Case No. 81/2018 Under Section 448/323 of IPC and under

section 4 R/W section 18 of the POCSO Act.

State of Assam

Versus

Shri Rakesh Kr. Yadav @ Rai

Name of informant/complainant:

Smti Guddy Kumari D/o Late Mohan Roy Village: Lahorijan

P.S: Khatkhati, District: Karbi Anglong

Name of the accused person facing trial:

Shri Rakesh Kr. Yadav S/O Shri Bihari Rai Vill-Lahorijan P.S : Khatkhati

District: Karbi Anglong.

Advocates appeared:

For the prosecution : Mr D. Deka, Public Prosecutor

For the accused : Mr Jitu Paul Argument heard on : 20.11.2018.

Judgment pronounced & delivered on: 20.11.2018

<u>J U D G M E N T</u>

1. It is a case of house trespass, voluntarily causing hurt with attempt to commit penetrative sexual assault alleged

to have been committed by the accused, Shri Rakesh Kr. Yadav.

- 2. The prosecution case in brief is that on 22.06.2018 the informant, Smti Guddy Kumari lodged an ejahar with Khatkhati Police Station stating inter alia that on the night 21.06.2018 at about 10:00 O' Clock, the accused along with two other persons illegally entered into her house and hugged her with the attempt to commit rape upon her. At that time, her mother appeared there and being followed by a quarrel, the accused assaulted her mother causing grievous injuries to her. Then the accused fled away while neighbouring persons gathered there. On receipt of the written ejahar, O/C, Khatkhati Police Station registered a criminal case vide Khatkhati Police Station case No.81/2018 U/S 325 of IPC R/W 8 of the the POCSO Act against the accused person. On completion of the investigation, charge-sheet was submitted under sec.323 IPC R/W 8 of the POCSO Act against the accused person. Hence the prosecution case has come up.
- 3. On completion of appearance of the accused person before this Court, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, this Court found sufficient grounds for presuming that the accused person had committed the offences U/S 448/323 of IPC and U/S 4 of the POCSO Act R/W section 18 of the said act and accordingly, the charges were framed. The particulars of the charged offences were duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

 During trial, Prosecution has examined two witnesses including the informant-cum-alleged victim. Accused person has been examined U/S 313 of Cr.P.C. Defense examined none. Plea of defence is of total denial.

5. **Points for determination are:**

- (i) Whether the accused person, Shri Rakesh Kr. Yadav on 21.06.2018 at village Lahorijan under Khatkhati police station illegally entered into the house of the informant, Smti Guddy Kumari and that he thereby committed an offense punishable U/S 448 of the IPC?
- (ii) Whether the accused person on the same time and place voluntarily caused hurt to Smti Prabhati Devi and thereby he committed an offence punishable under section 323 of the IPC?
- (iii) Whether the accused person on the same time and place attempted to commit penetrative sexual assault upon Smti Guddy Kumari aged 16 years and thereby committed an offence punishable under section 4 of the POCSO Act R/W section 18 of the said act?

6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded

in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

- 7. PW-1 is Smti. Pravati Devi has deposed that she knows the informant and the accused person. The alleged victim is her daughter. The occurrence took place one year ago. At the time of occurrence, she went to a shop for buying eggs. During the said time of going to the shop, a sister of the victim was staying there but she was ailing and mentally retarded. When she came back from the shop, she found the victim crying On being asked, the victim told that at the time of going to shop, the accused came to their house. By that time, the accused suddenly appeared before them and started beating her by a bamboo stick. She immediately informed the matter to police over phone. Then the accused fled away from their house. It was 11:00 PM at that time. At the time of occurrence, the victim was 16 years old.
- 8. PW-2, Miss Guddy Kumari is the informant of this case who deposed that on the night of the occurrence at about 10:00 O' Clock, her mother went to a shop for bringing eggs. At that time, she was enjoying TV. Although she has a sister, but she is ailing. In the meantime, the accused entered into her house and caught hold of her hand. She made herself free from the hands of the accused by giving him a kick and then she went out. She saw her mother coming towards their house and then the accused fled away. On arrival of her mother, while she was narrating the incident, the accused again came to their house and started beating her mother by a bamboo

stick. Her mother cried. Thereafter, the accused left the place. Her mother informed the matter to the police. The police went to the house of the accused taking them, but they did not find the accused in his house. Thereafter, she lodged the ejahar at Khatkhati police station. The Police got her statement recorded in the Court. Ext.2 is her statement and Ext.2(1), 2(2) and 2(3) are her signatures. Her father died two years ago of the occurrence. She has a mentally retarded sister. She is continuing her study as she is being helped by Mandir Committee of their locality and by elderly persons. After the occurrence, her whole family is suffering a lot of mentally. At the time of occurrence, she is 15 (fifteen) years old.

- 9. During cross examination, PW-1 told that the accused is their familiar person and he often used to come to their house. She failed to understand as to why the accused assaulted her. To the best of her knowledge, the accused did not commit any physical contact with her daughter.
- 10. PW-2 Miss Guddy Kumari in her cross examination deposed that the accused person has visiting terms with them and he used to take meal in their house. On the day of occurrence itself, the family members of the accused came to their house for taking meal. But at the time of occurrence, the other family members of the accused were not present. The accused did not commit any physical contact with her. While the accused was beating her mother, neighbouring people came there after hearing the shouting of her mother. Then the accused left the place. She further told that the ejahar was written by

somebody as per her instruction. She has no objection if the accused is acquitted by the Court.

- 11. In order to prove the offence U/S 448 of IPC, illegal entrance must be proved. As regards the illegal entrance of the accused, PW-1 could not say anything. On the other hand, although it has come in the evidence of PW-2 that she has an ailing sister, but she was not examined by the prosecution to prove the fact that accused had illegally entered into their house. Hence, it is found that the ingredients of offence U/S 448 of IPC are not proved at all.
- 12. From the deposition of the PW-2, it is found that while she was enjoying TV, the accused came and caught hold of her hand. But she somehow freed herself from the hands of the accused. To prove this part of deposition, the prosecution should have examined her sister who was available in the house at the time of occurrence. As her sister was in the house at the time of occurrence, she would have been the best and material witness to prove the fact of catching the hand of the victim by the accused person. On the other hand, PW-1 did not see the accused catching the hand of her alleged victim-daughter. Hence, offence under POCSO Act has not been proved at all against the accused person.
- 13. From the depositions of both the witnesses, it is found that the accused assaulted the mother of the alleged victim by a bamboo stick. The fact of assaulting the mother of alleged victim is also supported by the ejahar. On perusal of the case diary, this Court also found that the investigating police officer while recording the

statements of the victim and her mother, they told before him about the assault given by the accused by means of a bamboo stick to PW-1. The defence side has failed to shake the evidence of PW-1 and PW-2 as to the assault given by the accused to Smti. Prabhati Devi.

14. From the discussions made above regarding the offence of voluntarily causing hurt by the accused, this Court has come to conclusion that the prosecution has proved the case beyond all reasonable doubts. Accordingly, the accused is found guilty U/S 323 of IPC. Hence, he is convicted under this section of law.

ORDER

- 15. In the result, I find the accused person guilty under section 323 IPC and he is convicted accordingly.
- 16. On the point of sentence, the accused is heard. It has been submitted by the learned lawyer appearing on behalf of the accused person that the accused is entitled leniency in sentencing him. Considering all aspects the accused is here by ordered to suffer SI for 3 (three) months. Set off his earlier detention period. Furnish a free copy of judgment and order to the accused immediately. Accordingly this case is disposed of on contest.
- 17. Given under hand and seal of this Court today, this the 20th day of November, 2018.

Dictated and corrected by me.

Special Judge,

Special Judge,

Karbi Anglong, Diphu.

,Karbi Anglong, Diphu.

APPENDIX

Prosecution witness:

PW1- Smti.Prabhati Devi.

PW2- Smti. Guddy Kumari.

Defence witness: Nill.

Prosecution exhibit:

Ext.1- Ejahar.

Ext.2- Statement of the victim.

Defence witness: Nil.

Defence exhibit: Nil.

Special Judge,

Karbi Anglong, Diphu.