# IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

#### SONITPUR, ASSAM

## Spl. POCSO Case No. 21/2017 u/s 8 of the POCSO Act, 2012

State of Assam

-VS-

- 1. Sri Deben Tanti
- 2. Sri Bua Bhuj @ Buhaj Nag

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P. For the defence : Mr. P.P. Borah, learned Advocate.

Date of recording Evidence: 17.03.2018, 12.04.2018, 26.04.2018, 10.05.2018,

24.05.2018.

Date of Argument

: 07.06.2018.

Date of Judgment

: 07.06.2018.

# JUDGMENT

- 1. The prosecution case in brief is that on 18.09.2017 the informant namely, Sri Lachit Tosa, lodged an FIR with the OC, Gingia PS stating inter-alia that on the previous night his daughter (name is withheld) went to witness a function along with Atwari Munda and Maina Munda at Gingia Tea Garden on the occasion of 'Biswakarma Puja'. He alleged that after the function was over, the accused persons at about 3.30 AM proposed them that they would take them to their house. However, in the middle of the way the accused Deben forcibly pulled his daughter inside the Garden and tried to commit her on rape. When his daughter resisted, the accused assaulted her but his daughter somehow managed to escape after throwing some dust on his eyes. His daughter after arriving at her house informed to matter to them. On the other hand, Maina and Atwari ran in the meantime and informed the members of the Puja Committee about his daughter being taken away by the accused Deben, who later caught the said accused and handed him over to police.
- 2. Receiving the same, the police registered a case and investigated the matter. After

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investigation, the police submitted charge-sheet against both these accused persons u/s 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The accused in due course, appeared before this court to face trial. The copies of the relevant documents were furnished to them. As the accused Deben Tanti expressed his inability to engage a counsel of his choice to defend him, the learned Defence Counsel was accordingly appointed to defend the accused at the expense of the State from the panel of Legal Aid Counsel made for this purpose. Upon hearing both the sides, on the point of charge and taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused had committed an offence punishable u/s 8 of the POCSO Act, 2012, the charge was accordingly framed against them which on being read over and explained, both the accused pleaded not guilty.

3. During trial, the prosecution examined ten witnesses in all, including the alleged victim as PW 2 and the Investigating Officer as PW 10. The accused Deben Tanti was thereafter examined u/s 313 CrPC. His plea was total denial. He refused to any evidence on his behalf. However, as no incriminating evidence was found against the accused Bua Bhuj, his examination u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.

#### Points for determination

Whether the accused persons on the night of the said occurrence committed sexual assault on the said victim, who is a girl below 18 years of age?

#### Discussion, Decision and Reasons thereof

4. Let us straight away go to the evidence PW-2, the victim. She testified that the incident took place on the day of 'Biswakarma Puja'. She however, could not say the year in which the incident took place. According to her, on that night she went to witness a function along with Atuwari Munda and Maina Munda. The incident took place at the Pankha Line, at about 3 AM. She stated that the accused Deben had told her that he would leave them in their house. Accordingly, they accompanied him. The accused told them on the way that his sister would come but as his sister did not appeare, he took all the three girls inside the garden by rebuking them. She stated that the accused Deben had asked her whether she would love him but she answered in the negative. Thereafter, the accused Deben carried her on his back inside the garden but as she shouted, he dropped her and assaulted her with his hands. She thereafter, fled from the place of occurrence by throwing dust on his eyes and came to her house, where she informed about the incident to her mother. She stated that the people thereafter arrived and informed her father about the incident who then lodged the FIR. She stated that she could not say what had happened to the other two girls, who had accompanied her.

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During a course of investigation, her statement u/s 164 CrPC was recorded which she proved that Ext. 2.

- 5. Thus from the evidence of PW 2 as deposed by her in her examination-in-chief, we find that she has testified that the accused Deben had taken her inside the garden on his back but as she raised alarm, he dropped her and assaulted her with his hands. The victim thereafter, fled from the place of occurrence after throwing dust on his eyes. The evidence of victim therefore, clearly shows that the accused Deben did not commit any sexual assault on the victim as is required to be proved in order to convict the accused on the offence charged against him. Further we notice that the victim did not utter anything against the co-accused, Bua Bhuj.
- 6. Section 8 of the POCSO Act, 2012, under which the accused are charged states that "Whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 3 years, but, which may extend to 5 years and shall also be liable to fine".
- 7. Section 7 defines the term of 'sexual assault' as "whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."
- 8. Thus we find that PW 2 has not disclosed anything in her testimony which suggests that the accused Deben had made sexual assault on her. If we examine the evidence of Medical Officer, PW 9, Dr. Junali Gogoi, who examined the victim on 19.09.2007 and proved her Medical Report issued by her as Ext. 2, we find her stating that the victim was conscious and was normal in her behaviour during the time of her examination. Further, she stated that she found no injury mark on the body of the victim. She also did not find any sign of recent sexual intercourse on her body. The evidence of PW 9, therefore, confirms that no sexual assault had taken place on the said victim on that relevant night.
- 9. PW 4 Atuwari Munda and PW 6 Maina Munda deposed that they accompanied the victim when the accused persons took them towards the garden. PW 4 stated that when the accused Deben carried the victim inside the garden then both she and PW 6 ran towards their line and informed people about the matter. PW 4 stated in her cross stated that the accused Bua Bhoj did not do any wrong to them. PW 6 corroborated the PW 4 and stated that when the victim was carried away by the accused Deben, they fled out of fear and therefore, she could not say what had happened thereafter to the victim. From the evidence PW 4 and PW 6, we therefore find do not find anything that shows that any sexual assault was committed by the accused Deben on the victim. Other witnesses

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as examined by the prosecution including the informant PW 1 Lachit Tosa are hear-say witnesses. PW 3 Santi Tosa, who is the mother of the victim, PW 7 Kismat Karmakar, PW8 Putuli Munda did not witness the said occurrence. PW 10- the Investigating Officer, SI, Abhiram Taw stated in his cross that the victim did not state before him during investigation of the case that the accused Deben had told him that he loves her. PW 5, Rajanti Munda, is the mother of the PW 4 Atuwari Munda. She stated that her daughter did not inform her anything about the incident.

- 10. Thus from the evidence of the prosecution witnesses more particularly, from the evidence of victim-PW 2 and the Medical Officer, PW 9, Dr Junali Gogoi, I find that the prosecution has failed to prove its case. As such, I acquit the accused persons from the offences charged against them and set them at liberty forthwith. As the accused Deben Tanti has faced trail from Jail, the Jail Authorities be directed to release the accused forthwith, if not required in any other case against him. The bail bond of the accused Bua Bhuj is extended for a period of six months u/s 437-A CrPC, as prayed for. The seized birth certificate and admission certificate in the name of the victim be restored on the informant. The case is disposed of.
- 11. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 7<sup>th</sup> day of June, 2018.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

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### **ANNEXURE**

Witnesses examined by the Prosecution:

PW1- Sri Lachit Tosa

PW2- Victim

PW3- Smti Shanti Tosa

PW4- Miss Atuwari Munda

PW5- Smti Rajanti Munda

PW6- Miss Maina Munda

PW7- Sri Kismat Karmakar

PW8- Smti Putuli Munda

PW9- Dr. Jonali Gogoi (M.O.)

PW10- S.I. Abhiram Taw (I.O.)



Exhibits proved by the prosecution witnesses:

Exhibit-1: FIR.

Exhibit-2: Statement of the victim u/s 164 CrPC

Exhibit-3: Sketch Map

Exhibit-4: Charge sheet

Exhibit-5: Seizure List

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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