

IN THE COURT OF THE SPECIAL JUDGE, CHIRANG, KAJALGAON.

PRESENT :

Sri D.J.Mahanta, Special Judge, Chirang, Kajalgaon.

SPECIAL (P) CASE NO. 4(BASU) OF 2016

Under Section 376(2)(i) I.P.C. r/w. Section 4 of POCSO Act.

State of Assam

-Versus -

Bimal Saha Accused Person

ADVOCATES WHO APPEARED IN THIS CASE

For the State

Sri D.Das,

Learned Public Prosecutor.

For the accused

Mr. M.Kr. Wary,

Learned Advocate.

Evidence recorded on

22.9.16, 7.3.18, 9.4.18,

23.4.18, 5.5.18.

Argument heard on

28-06-2018

Judgment delivered on : 03-07-2018

J U D G M E N T

- The prosecution case in brief is that, on 30.5.2016, one Rinku Das Purkayasta of Basugaon Vivekananda Pally W/No.4, lodged an FIR before Basugaon Police Station stating inter alia that, accused Bimal Saha sexually assaulted her minor daughter aged about seven years since few months and after discussion with the village people, accused was handed over to police. On the basis of said FIR, the Basugaon P.S. Case No.42/2016 U/S 376(2(i) of I.P.C. r/w Section 4 of POCSO Act was registered against the accused person and police started usual investigation thereon. Concerned I.O. investigated the matter and recorded the statements of the witnesses. Statement of the victim was also recorded u/s 164 Cr.P.C. and police arrested the accused person. After completion of the investigation, police submitted charge-sheet U/S.376(2)(i) I.P.C. r/w Section 6 of POCSO Act against the accused.
- 2. Accused was produced before this Court. Copies of relevant documents were furnished to the accused. After hearing both sides on point of consideration of charge, my learned predecessor framed formal charge U/S 376(2)(i) I.P.C. r/w Section 4 of POCSO Act against accused. Charge was read over and explained to the accused person to which he denied to plead guilty. During trial, accused was released on bail.
- **3.** In support of the case, prosecution brought the following witnesses.

P.W.1 – Smti. Rinku Das Purkayasta (Informant)

P.W.2 – Miss. 'X' (Victim)

P.W.3 - Sri Sanjay Chanda

P.W.4 - Smti, Arati Chanda

P.W.5 - Sri Bapan Chanda

P.W.6 – S.I. Nabin Ch. Boro (I.O.)

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P.W.7 – Dr. Meena Hazarika (M.O.)

P.W.8 - S.I. Abdul Barik Sk. (I.O.)

- **4.** Prosecution exhibited the F.I.R. as Ext.1. Charge-sheet was exhibited as Ext.2. Medical report was exhibited as Ext.3. Extract copy of Basugaon P.S. G.D.Entry No.798 dated 30.5.2016 was exhibited as Ext.4. Sketch map was exhibited as Ext.5.
- **5.** Defence plea is of total denial. The statement of accused person was recorded U/S 313 Cr.P.C. Defence adduced no evidence.
- **6.** Heard argument from both sides. I have perused the entire evidence on record. I have also considered the statement of the accused person recorded u/s 313 Cr.P.C.

7. <u>POINTS FOR CONSIDERATION</u>

i) For the offence u/s 376(2)(i) I.P.C. -

Whether for 5/6 months prior to the date of filing F.I.R. i.e. 30.5.16, accused committed rape on the minor daughter of the informant aged about 7 years?

For the offence u/s 4 of POCSO Act -

ii) Whether during the said period, accused committed penetrative sexual assault on the minor daughter (aged about 7 years) of the informant?

8. <u>DISCUSSION, DECISION AND REASONS THEREFOR</u> :-

Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned points simultaneously for the sake of convenience. P.W.1 is the informant. She deposed that, victim was her daughter and her age was about seven years. She heard from one Arati Chanda that accused sexually assaulted her daughter. Then she informed the matter to neighbours. The villagers advised her to lodge an FIR before police

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station. Accordingly, she lodged F.I.R. During her cross examination, P.W.1 deposed that her daughter went to Darangiri. From Darangiri Arati Chanda told her about the incident. Prior to that victim did not state anything to her about the alleged sexual assault by the accused. She further deposed that she did not lodge the F.I.R. according to her own conscience. She was pressurized by the villagers. Due to ill advice by the villagers, she lodged the case. Her daughter did not state prior to filing of the F.I.R. that, she was sexually assaulted by the accused. So, from her evidence it is found that, she had no direct knowledge. The victim also did not report her. Due to ill advice and pressure from the nearby persons, without knowing the actual fact, she lodged the F.I.R.

- 9. P.W.2 is the victim. She deposed that the accused was her neighbor. Occurrence took place seven months ago. One day, she accompanied the accused to his home. The accused did not do any type of illicit act with her. After filing of the F.I.R. she made statement before the Magistrate. She stated before the Magistrate that accused committed sexual intercourse with her but according to P.W.2 this fact was tutored by the villagers. Actually accused did not commit any bad act with her. This witness also stated that according to ill advice and the pressure from the villagers she was tutored to state what they stated, therefore, she had stated a false story against the accused.
- P.W.3 deposed that he heard about the incident. According to P.W.3, there was good relationship between the family of the accused and informant. Accused often visited the house of the informant. Learned P.P. pointed out that P.W.3 stated before police that his mother noticed that victim was limping for which she asked about the reason of limping then victim replied that accused had committed sexual assault upon her for which she was limping. This fact was totally denied by the P.W.3.
- P.W.4 was declared as hostile by the prosecution. During cross by learned P.P., P.W.4 deposed that as matter was compromised between the parties outside the Court they could not say the actual fact. She denied the suggestion given by learned P.P. that she had deposed before police that

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accused continuously raped upon the victim by threatening her of ghost about 4/5 months for which she felt pain on her private part and later on she had reported the matter to her son and the mother of the victim.

- **12.** P.W.5 deposed that he heard that accused committed sexual intercourse with the victim. He had no knowledge about the actual incident.
- **13.** P.W.6 is the investigating officer who submitted charge-sheet.
- 14. P.W.7 is the Medical Officer. According to her opinion, age of the victim was below ten years but above seven years. According to P.W.7, it could not be ascertained whether victim was raped or not. No any injury mark was found upon the private part and body of the victim.
- 15. P.W.8 is S.I. Abdul Barik Shiekh, who investigated the matter. In his examination in chief he deposed that P.W.4 had stated before him that accused Bimal Saha continuously committed rape upon victim by threatening her of ghost about 4/5 months for which she felt pain on her private part and later on she had reported the matter to her son and the mother of the victim. This witness further confirmed that P.W.4 had stated before him that victim was taken by her to Darangiri. She further stated before him that at night victim awake up for natural call and she asked her to go outside, then she was limping after noticing she asked her what was the reason of limping then she replied that accused Bimal Saha committed rape upon her for which she could not sit properly. P.W.8 drew sketch map, arrested the accused, recorded the statement of witnesses and collected medical report.
- After going through the entire evidence on record it is found that victim herself denied the allegation of sexual intercourse committed by accused. She deposed that due to pressure from the villagers she stated before the Magistrate that she was raped by accused. The informant also stated that prior to filing of the F.I.R. she was pressurized by villagers. It is found that victim was taken to Darangiri by one Manju Chanda. After returning from Darangiri she reported the matter to P.W.4 that accused committed sexual intercourse with the victim (P.W.2). P.W.1 clearly stated that prior to going to Darangiri, victim did not state that accused committed sexual

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intercourse with her. She also did not notice that victim was limping. Manju Chanda was not examined. She was not inserted as witness in charge-sheet. Therefore, it is found that the allegation was after thought by some other persons. The victim and informant clearly stated that as they were pressurized by the villagers, they lodged the F.I.R. against the accused. As victim totally denied the allegation, so, accused cannot be booked for the offences mentioned above. Other witnesses heard the matter from the victim. The material witness failed to support the case. Evidence of other witness is hearsay and not admissible according to Evidence Act. It is not revealed from the evidence of the victim that she had stated to P.W.4 that accused committed sexual intercourse. So, points mentioned above are not proved against the accused. Both points are remained as not proved.

ORDER

- 15. Prosecution failed to prove the case U/S 376(2) (i) I.P.C. r/w. Section 4 of POCSO Act against accused Sri Bimal Saha. Accused is acquitted and set at liberty. He is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then he is allowed to remain on previous bail.
- 16. A copy of this Judgment and Order shall be given to the District Magistrate for information.

Given under my sign and seal of this Court on this the 3rd day of July, 2018, at Kajalgaon, Chirang.

Dictated & corrected

Jahanta) 3/7/18

APPENEDIX

Prosecution Witnesses

P.W.1 – Smti. Rinku Das Purkayasta (Informant)

P.W.2 - Miss. 'X' (Victim)

P.W.3 – Sri Sanjay Chanda

P.W.4 – Smti. Arati Chanda

P.W.5 - Sri Bapan Chanda

P.W.6 - S.I. Nabin Ch. Boro (I.O.)

P.W.7 – Dr. Meena Hazarika (M.O.)

P.W.8 - S.I. Abdul Barik Sk. (I.O.)

Defence Witness.

Nil

Prosecution Exhibits.

Ext.1 - F.I.R.

Ext.2 - Charge-sheet.

Ext.3 – Medical report.

Ext.4 – Extract copy of Basugaon P.S. G.D.Entry No.798 dated 30.5.2016.

Ext.5 - Sketch map.

Defence Exhibits

Nil

Special Judge Chirang Kajajgagona