IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.10/2017

State of Assam

Versus

Sri Nijendra Narzary Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.Kr. Ghosh (Special P.P.)

Ld. advocate for the accused: Mr R.J. Borgoyari

Evidence recorded on : 27.7.17, 15.9.17, 27.11.17, 27.02.18 and

09.4.2018

Argument heard on : 14.11.2018

Judgment delivered on: 20.11.2018

J U D G E M E N T

1. The prosecution story in brief is that on 30.5.2017 the informant Malaya Deka, Chairperson, CWC, Kokrajhar lodged the first information report before the Officer-in-charge of Kokrajhar P.S. with the allegation that the two minor girls namely Madhu Munda aged about 16 years and Rekha Munda aged about 13 years were kept as maid servants in the house of the accused without any remuneration. Both the girls were physically and sexually exploited by the accused since the last two years from the date of filing of the FIR. It is also stated that the complaint was brought before the CWC by Smti Sanumoni Narzary, wife of the accused. Hence, the first information report.

- 2. On receipt of the first information report in Kokrajhar P.S., a case has been registered under Kokrajhar Police Station case No.204/17 under section 4/8 of POCSO Act and the case was endorsed to the SI Narayan Boro for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses, recovered the victim girls, medically examined them and after ascertaining the minor age of the victims, the charge sheet has been filed by the I.O. under section 506 IPC, R.W. section 4 POCSO Act against the accused Nijendra Narzary. Relevant copies also furnished to the accused and my learned predecessor framed the charge under section 4 of POCSO Act, R.W. section 506 IPC against the accused person finding a prima-facie case. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 12 (twelve) prosecution witnesses and two DWs including the victims and the informant as follows:-

PW 1 Ms Malaya Deka,
PW2 Miss Madhu Munda (victim),
PW3 Miss Rekha Munda (victim),
PW4 Smti Sobha Munda,
PW5 Sri Bishram Munda,
PW6 Smti Sanumoni Narzary,
PW7 Dr Manisha Boro Phukan,
PW8 Sri Sajendra Narzary,
PW9 Sri Budhadev Narzary,
PW10 Sri Lal Mohan Mushahary,

PW11 Sri Najendra Narzary PW12 SI Narayan Boro, DW1 Smti Anjima Brahma DW2 Smti Bindu Brahma

4. The defence took the plea of total denial while recording his statement under section 313 of Cr.P.C. and adduced two DWs in support of his case.

5. **Points for determination:**

- (1) Whether the accused committed penetrative sexual assault on the minor victims ?
- (2) Whether the accused threatened the victims to face dire consequences on disclosing about the penetrative sexual assault to others?

Discussion. Decision and Reasons thereof:

6. After perusal of the case record and the evidence of PWs and DWs and hearing argument from both sides the case is decided as follows:-

The first information of this case was lodged by the Chairperson CWC, Kokrajhar against the accused with the allegation that two minor girls namely Madhu Munda aged about 16 years and Rekha Munda aged about 13 years were kept as maid servants in the house of the accused without any remuneration. Both the girls were physically and sexually exploited by the accused since the last two years from the date of filing of the FIR. It is also stated that the complaint was brought before the CWC by Smti Sanumoni Narzary, wife of the accused. The Chairperson CWC, Kokrajhar accordingly deposed before the court as PW 1 and stated that on 28.3.17 she got information about sexual exploitation on two minor girls who were recovered

from a tea stall and accordingly they were brought to police station and accordingly she brought them to her office and enquired the matter, their statements were recorded and it reveals from their statements that they also originally hail from Tezpur. They were brought to Kokrajhar as domestic help in the residence of the accused. The victim Madhu Munda reported before her that the accused sexually assaulted her in many times and also threatened her not to disclose anything about the same to others. She also stated that she saw the accused while committing rape on her younger sister Rekha Munda. The other victim Rekha Munda also reported before her that the accused used to touch her private part at many times and she also had sexual relationship in many occasions with the accused. The wife of the accused Sanumoni Narzary also informed to her that the accused/her husband was continuing his sexual relationship with both the victims but, due to fear she could not disclose this thing to others and even she requested PW1 not to disclose anything to her husband otherwise there would be serious consequences. After recording these statements of the victims PW1 lodged the FIR.

7. From her cross evidence it reveals that after recovery of the victims she also registered recovery case and Protection Officer also look after the matter. She also stated that after counseling with the victims and recording their statements she lodged the FIR. She denied to the suggestion that she lodged false case against the accused only due to professional dispute as she is hotel owner and at the time same the accused is fish merchant for which there was dispute in regard to the price of the fish etc. for which she lodged the FIR. Thus, it is seen that PW1 lodged the FIR as per instruction received from the victims and wife of the accused and after enquiring the matter she lodged the FIR. But, surprisingly the other PWS did not support the prosecution case. The

most vital witnesses of the prosecution case i.e two minor victims gave completely different statements denying the prosecution case.

- 8. As per PW2 and PW3 the victims, accused never committed rape on them nor he sexually exploited them. They gave some false statements before the court only as per instruction of the wife of the accused. PW3 also deposed that the wife of the accused is like her sister and hence she herself and her sister gave some false statement before the police and the learned Magistrate as per her advice. In their cross evidence they also brought allegation against the office members of CWC and stated that they tortured them in the office and was compelled to give statement against the accused.
- 9. PW4 and PW5 mother and father of the victims deposed that the accused is innocent and their daughters were not resided in the house of the accused as maid servants. They also visited to his house only as per family relation with the wife of the accused.
- 10. PW6 another vital witness of the prosecution who is the wife of the accused deposed before the court that she does not know anything about the incident of commission of any offence by her husband. Her examination-in-chief was reserved due to her illness but, subsequently the prosecution declined to record her evidence and hence part of the evidence adduced by PW6 was accordingly expunged with.
- 11. PW7 M.O. who examined both the victims. As per opinion of doctor the victim Rekha Munda might or might have not had sexual contact and she opined that the other victim Madhu Munda has not exposed to sexual contact. As per report of radiological the age of the victim Rekha Munda is about 14/16 years and the age of other victim is about 16/18 years at the time of examination.

- 12. PWs8, 9, 10 and 11 also did not support the prosecution case and as per them also the accused is innocent and has not committed no such offence as alleged against him.
- 13. PW 12 is I.O. of this case who filed the charge sheet against the accused finding prima-facie material under section 4 of POCSO Act. As per him he started investigation on receipt of the FIR from PW1, Chairperson, CWC, Kokrajhar visited the place of occurrence, recorded the statement of the witnesses, examined the victims and after obtaining the medical certificate he filed the charge sheet.
- 14. The accused denied all the allegations brought against him and in support of his case he also examined two witnesses, DW1 and DW2. DW1 Anjima Brahma is sister-in-law of the accused and she deposed that she used to attend her school from her own residence and she is frequent visitor to the rented house of the accused at Kokrajhar town. As per her there was no maid servant in their house. However, she saw Rekha Munda and Madhu Munda in the house of the accused as they are the relatives to the wife of the accused. In her cross evidence she specifically stated that after filing the FIR by Chairperson of CWC, Kokrajhar she made an enquiry with the alleged victims Rekha Munda and Madhu but, they denied about the same.
- 15. DW2 nighbour of the rented house of the accused and she also deposed that two girls were seen in the house of the accused and when she made an enquiry to the wife of the accused she informed that they are her relatives. From her evidence it also reveals that she used to visit to the rented house of the accused which is about 100 meters far from her house but, she never heard about any such incident or anything bad about the accused.

- 16. So from the discussion made above, it is seen that presence of two girls in the rented house of the accused is not disputed. As per the FIR and the evidence of PW1 both girls were kept in the house of the accused as domestic help and during that period the accused sexually exploited both the victims and even he committed rape on the minor victims. But, surprisingly none other witnesses including the vital witnesses of the prosecution i.e. minor victim girls as well as their parents did not bring any allegation of sexual assault or rape against the accused, rather they very specifically stated in their evidence that the accused did not commit rape on them and what they have been stated in their statements before the police or Magistrate are only as per instruction and advice of the wife of the accused. The wife of the accused is like their sister and hence they simply help her and gave such statement against the accused only as per her advice and instruction. They not only brought the allegation against the wife of the accused but, also stated that they were bound to give false statement against the accused due to torture by the member of CWC, Kokrajhar. The other witnesses i.e. PWs 8, 9, 10 and 11 also did not support the prosecution version.
- 17. Coming to the evidence of DW1 it is seen that both DW1 and DW2 admitted presence of two minor girls in the rented house of the accused and on enquiry made by DW1 and DW2 they came to know that the accused is innocent and they denied the allegation against the accused about sexual assault and rape on them. The prosecution also failed to rebut the evidence of both DWs by cross-examining them. Though they admitted presence of two girls in the rented house of the accused, they completely denied the prosecution case.

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18. So from the above discussion, it is seen that the except the informant, Chairperson, CWC, Kokrajhar none of the other witnesses supported the prosecution case. So without any corroborating evidence with the PW1, her entire evidence cannot be accepted when the victims even did not support the prosecution. More so, the prosecution could not bring any evidence that due to some malafide reason the victims as well as their parents denied to adduce evidence against the accused.

19. Thus, it is seen that the prosecution could not establish the case against the accused under section 4 of POCSO Act, R.W. section 506 IPC beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the court on this 20th November/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge,

Kokrajhar

Special Judge,

Kokrajhar

Appendix

The prosecution witnesses are:

- 1) PW 1 Ms Malaya Deka,
- 2) PW2 Miss Madhu Munda (victim),
- 3) PW3 Miss Rekha Munda (victim),
- 4) PW4 Smti Sobha Munda,
- 5) PW5 Sri Bishram Munda,
- 6) PW6 Smti Sanumoni Narzary,
- 7) PW7 Dr Manisha Boro Phukan,
- 8)PW8 Sri Sajendra Narzary,
- 9) PW9 Sri Budhadev Narzary,
- 10) PW10 Sri Lal Mohan Mushahary,
- 11) PW11 Sri Najendra Narzary
- 12) PW12 SI Narayan Boro,

The Court Witness is: Nil.

The Defence witness is:

- 1) DW1 Smti Anjima Brahma
- 2) DW2 Smti Bindu Brahma

The exhibited documents are:

- 1. Ext-1 ... FIR
- 2. Ext.2 ... Medical report of the victim
- 3. Ext.3 ... Medical report of the victim
- 4. Ext.3(i) ... Charge sheet

The Defence witness and exhibit: Nil

Special Judge, Kokrajhar