IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 26 OF 2017

(Under Section 4 of the POCSO Act, arising

out of GR Case No 1861 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Sri Jamun Biswakarma

2.Sri Thakur Prasad Biswakarma,

Both are S/o Late Chandulal Biswakarma,

Vill- Rupanjali, P.S. – Missamari, Dist- Sonitpur. **3.Sri Ganesh Rai**,

S/o Late Sarbadhaj Rai, Vill – Naharani.

P.S. – Missamari, Dist- Sonitpur.

Date of framing charge 25-08-2017

Date of Recording Evidence :- 07-09-2017,25-09-2017,

06-11-2017,16-11-2017,&

30-11-2017.

Date of examination of accused u/s :- 30-11-2017.

313 of Cr.P.C.

Date of Argument :- 30-11-2017.

Date of Judgment :- **30-11-2017.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Public Proecutor,

Sonitpur.

Counsel for Accused :- Mr HP Sadai, Advocate.

JUDGMENT

- 1. In this case accused Jamun Biswakarma, Thakur Prasad Biswakarma and Ganesh Rai are put for trial for the allegation of charge under Section 4 of the POCSO Act.
- 2. The factual matrix according to the FIR in brief is that on 26-05-2017 the informant Bir Bahadur BIswakarma heard from his minor daughter(Victim) that accused persons all are above 50s committed rape her. On being come to know about the incident, he made complaint to their neighbour. The neighbour advised he informant to file the ejahar. Hence, this prosecution case.
- 3. The ejahar was filed by the complainant Sri Bir Bahadur BIswakarma before the OC, Missamari Police Station on 28-05-2017.
- 4. On receipt of the ejahar, O/C, Missamari Police Station registered the case vide Missamari Police Station Case No 61/17 under Section 376(d) of IPC, r/w Section 6 of POCSO Act. After completion of investigation, O/C, Missamari Police Station sent up the case against the accused persons under Section 4 of POCSO Act.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 4 of POCSO Act. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined as many as seven witnesses which include informant and victim. After examination of the 7th witness, learned Counsel for the accused submitted to close the prosecution evidence on the ground that this is a case under Section 4 of POCSO Act, where the victim no way support the prosecution case and it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. A close scrutiny of the statement of the statement of witnesses, particularly the complainant and most particularly the victim, it appears that the victim herself stated that on the day of incident, accused Ganesh Rai came to their house and forcibly wants to have meal. Other accused Jamun Biswakarma and

Thakur Biswakarma did not do anything to her. Thereafter, her father along with one Subba filed this case. After instituting the case, she made statement before the learned Magistrate under Section 164 CrPC. She made statement before the learned Magistrate under the dictation of Mr Subba and one "Baideo". Ext.1 is the said statement and Ext. 1(1), 1(2) and 1(3) are her signatures. Therefore, the victim no way reveals any material against any of the accused. Similarly, the complainant also did not indicate the accused persons to convict them with the statement of witnesses, most particularly the evidence of victim. With the evidence of said witnesses I think that it would be futile to examine the other witnesses. Even if examined the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused person. Considering this all, prosecution evidence is closed.

- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused persons and the allegations made against the accused persons are put before me for his explanation where they denied the allegations and declined to give defence evidence.
- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that
 - (1) "Whether on 26-05-2017, at Kalamati, Rupanjali, under Missamari PS, the accused persons committed penetrative sexual assault on Miss "X" and thereby committed an offence punishable under Section 4 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- 12. PW1 Bir Bahadur Biswakarma, who is the complainant of this case, deposed that the victim is his daughter. He knows all the accused persons by their names. The incident took place about four months ago and at the relevant time his victim daughter was alone in her home and he went to market. Everyday, he went out to work outside of his house and usually returned home in the evening time. He has no wife. Accused Serpa Lengra has paid money to his daughter for sexual

intercourse. He does not know if other two accused persons did something. The age of his daughter is about 12 years. The case was filed by his about three months ago. The scribe after writing the ejahar did not read over to him. A village meeting was convened for the allegation of involving his daughter in some incident. The persons against whom the meeting was called were not present in the Court today. The meeting was held in their village. After the meeting, he has filed the ejahar by putting his thumb impression.

In cross-examination he stated that at the advice of local public the scribe has written the ejahar and he has only put his thumb impression thereon. He has not informed to police. Police did not record his statement, but, police recorded the statement of his victim daughter. Accused Ganesh Rai possesses a plot of land measuring 5 bighas which is situated adjacent to his house and Ganesh Rai resides in the house which existed in the aforesaid plot of land. In the aforesaid land of Ganesh Rai a new road was being constructed. Some of the trees(Gomari) belonged to Ganesh Rai fell on the said road and the local public not to cut the said trees as the said trees belongs to public. For that incident, a strain relation becomes in between both the parties.

PW2 Sri Jiten Rai @ Jiban deposed that he knows all the accused 13. persons as well as the complainant and the victim and the incident took place about three and half months ago. As a President of Gorkha Student Union, of Jangalmati, He has been invited to a meeting allegation of committing misdeed to the victim Miss "X"by the accused persons and accordingly, he attended the said meeting and came to know from the local public that accused persons committed "Beya Kam" to the victim. In the meeting the father of the victim stated that he accused persons committed "Beya Kam" to the victim. It is also stated in the meeting that in the house of victim, only she along with her father resides as the mother of the victim died earlier and sometimes, she has to say alone in their house while her father went out to works. In the said meeting victim Miss "X" told that accused Jamun Biswakarma, Gonesh Rai and Thakur Prasad Biswakarma forcefully raped her and in the said meeting Jamun Biswakarma and Thakur Prasad Biswakarma were also present and other accused Ganesh Rai was absconding. Therefore, in the meeting the local public advised the complainant to file the case.

In cross-examination, he stated that the ejahar was written in the said meeting. He cannot recall the name of the scribe. Police came to the said meeting and the ejahar was handed over to the police at the meeting. Before arrival of police, two accused persons confessed their guilt. Police recorded his statement at the police station. He also stated that he has not heard anything from the mouth of the victim Miss "X".

- 14. PW3 Bhim Bahadur Subba, who turned hostile, stated that he knows the complainant and victim. The incident took place about three and half months ago. The complainant is his neighbout. At the relevant time, the victim girl was studied at Class-IV standard. The mother of the victim was expired. In their house, she is lived alone only with her father. On the day of incident, father of the victim went out to do his work. The complainant informed him that an incident took place with his girl. He was also reported that accused persons committed rape on victim Miss "X". He becomes surprised and then a meeting was convened at village. In the meeting, accused Jamun Biswakarma and Thakur Prasad Biswakarma had come, but, Ganesh Rai did not come. It was decided in the meeting that the ejahar was required to be lodged in the police station. After one day of the incident police came to the place of occurrence. Then he turned hostile.
- 15. PW4 Bir Bahadur Rai, who also turned hostile. The un-hostile portion of this evidence is that, the incident took place 4/5 months ago. He knows the victim and her father. They are belongs to their village. Then, he turned hostile.
- 16. PW5 Mina Chetry who also turned hostile. The un-hostile portion of her evidence is that she knows the complainant as well as the accused persons. She also know the victim. She does not know about the incident. The local public caught the accused persons and handed over to police. The victim girl reported to her father that the accused persons committed rape on her. Therefore, the local people handed over them to police. Then she turned hostile.
- 17. PW6 victim Miss "X", who was examined after her ability to administer, ought stated that she knows all the accused persons, but, she knows only Jamun Biswakarma and Ganesh Rai. The incident took place in the day time. At the relevant time she was alone in the house. Her father went out to market. During that

time accused persons came to their home. Accused Ganesh Rai attempted to commit misdeed her forcibly. She further added that Ganesh Rai came to their house, forcibly wanted to have meal. After having meal he left their house. Jamun Biswakarma and Takhur Prasad Biswakarma did not do any misdeed to her. Thereafter, her father along with Mr Subba filed this case. After instituting the case she was examined medically by doctor and her statement was also recorded according to the dictation of Subba and one 'Baideo' made such statement before the learned Magistrate. Ext.1 is the statement recorded under Section 164 CrPC and Ext.1(1), 1(2) and 1(3) are her signatures. She made statement before the Court truly.

In her cross-examination, she admitted that her father filed this case at the instigation of Mr Subba. Her father is an illiterate person. After instituting the case, one Rita Rabha which they called as Baideo accompanied her to police station and also accompanied her to the Magistrate. In fact, Rita Rabha made statement before the learned Magistrate. She only put signature. In fact she did not speak anything to learned Magistrate and to the police. They do not have any objection in all the accused persons. Even they have no any objection, if the accused persons are enlarged on acquittal. On Subba has called a village meeting

18. PW7 – Smti Rita Rabha deposed that she knows all the accused persons as well as the victim. The incident took place about seven months ago and after the incident, the victim was taken to police station and she was also called to interpret the language as the victim do not know Assamese. During that time, she interpreted the language of the victim into Assamese. She stating that accused persons gives Rs. 10/- to the victim for "Beya Kam". All the accused persons came separately for doing "Beya Kam". Police recorded her statement. She came to know that the victim girl was sent for medical examination and to the Court.

In her cross-examination, she stated that she has been called by Gorkha Student Union Personnel Narayan Biswakarma and requested me to interpret the statement of the victim into Assamese. As per his request she went to the police station and there she meets the victim. She does not know whether the victim can speak or understand Assamese language.

19. This much is the prosecution evidence.

- 20. The accused persons are charged under Section 4 of POCSO Act. To prove under Section 4 of POCSO Act, prosecution must prove the ingredients as enumerated Section 3 of POCSO Act.
- 21. **Penetrative Sexual assault** A person is said to commit "Penetrative sexual assault" if
 - "(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus o a child or makes the child to do so with him or any person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body or the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
 - (d) he applies his mouth to the penis, vagina, anus, urethra or the child or makes the child to do so to such person or any other person.

"The clause defines the offence of penetrative sexual assault. It provides that if a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or he manipulates any part of the body or the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or he applies his mouth to the penis, vagina, anus, urethra or the child or makes the child to do so to such person or any other person, he is said to commit the offence of **penetrative sexual assault**".

22. Here in this case, PW6- the victim, who is the star witness in this case. The statement of victim Miss "X" does not reveal any ingredients of the aforesaid Section. Therefore, charge under Section 4 of POCSO Act failed. Hence, I do not have any hesitation to acquit the accused. Accordingly, accused persons are acquitted and set them at liberty forthwith.

- 23. The liability of the bailor is hereby discharged.
- 24. Send back the LCR.

Given under my Hand and Seal of this Court on this the 30^{th} day of November, 2017.

(A. K. Borah) Sessions Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(A. K. Borah) Sessions Judge, Sonitpur, Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

APPENDIX

Witnesses examined by the prosecution:

- 1.PW1 Sri Bir Bahadur Biswakarma, Complainant,
- 2.PW2 Sri Jiten Rai @ Jiban,
- 3.PW3 Sri Bhim Bahadur Subba
- 4.PW4 Sri Bir Bahadur Rai
- 5.PW5 Smti Mina Chetry
- 6.PW6 Miss "X" (victim) &
- 7.PW7 Smti Rita Rabha.

Documents exhibited by the prosecution:

1. Ext. 1: Statement of the victim recorded under Section 164 CrPC.

(A. K. Borah) Sessions Judge, Sonitpur, Tezpur.