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

Present : Md. A.U. Ahmed, AJS,

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 04/2013 (Special)/ (Sessions Case No. 113/15) corresponding to GR Case No. 212/2013 & Kheroni Police Station

Case No. 75/2013

Under Sections 376(2)(f) of the IPC/ 4 of the

POCSO.

State of Assam

Versus

Shri Ranjit Tisso

Name of informant/complainant:

Shri Babu Bey

S/O Shri Bhim Bey

Village: Mukhim Gaon

PS: Kheroni

District: Karbi Anglong

Name of the accused person facing trial:

Shri Ranjit Tisso

Son of Shri Kat Tisso

Village: Batplang, Jengkha

PS: Kheroni

District: Karbi Anglong

Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor.

For the defence : Mr J. Paul.

Argument heard on : 07.08.2019.

Judgment pronounced & delivered on: 17.08.2019.

<u>JUDGMENT</u>

- 1. It is a case of penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 25.10.2013, the informant-Shri Babu Bey lodged an ejahar with the O/C of Kheroni Police Station stating inter alia that on 12.10.2013, his daughter-Smti. Purnima Beypi aged 12 years along with her friend named Smti. Sewali Engjaipi went to Jenkha Market for enjoying Durga Puja. On that date at 10 PM, the accused introducing himself as their relative proposed to drop them in their houses in his auto-rickshaw. Although his daughter was reluctant to go with him, the accused forcibly boarded them in his auto rickshaw and moved towards their house. In a jungle situated in between Jenkha and Menmeji Gaon he raped his daughter. The friend of her daughter managed to flee from the said situation. Shri Biren Tisso, the brother of the accused took zimma of the accused in a "Vichar" and proposed to settle the matter socially. But thereafter, he hid the accused-brother in an unknown place for which delay took in filing the ejahar. On receipt of the ejahar, O/C Kheroni Police Station registered a case vide its PS case No. 75/2013 under section 376(2)(f) R/W section 4 of the POCSO Act. On completion of investigation, I.O. submitted the charge-sheet under the registered section of law against the accused person. Hence the prosecution case has come up.
- 3. On completion of appearance of the accused person, copy was furnished to him. Having very carefully gone through the submissions advanced by the learned lawyers of both sides as well as case dairy I found sufficient ground for

presuming that the accused person committed the offence under section 4 of the POCSO Act. Accordingly, the charge was framed. The particular of the offence charged was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During prosecution has examined as many as 9 (nine) witnesses including the informant and the alleged victim. Statement of the accused person was recorded under section 313 of Cr.P.C. Defence declined to adduce evidence. Plea of defence is of total denial.

5. **Point for determination is:**

Whether the accused person on 12.10.2013 at about 10:00 PM in a jungle situated in between the villages, namely, Jenkha and Menmeji under Kheroni Police Station caused penetrative sexual assault to Miss Purnima Beypi aged 12 years and that he thereby committed an offence punishable under section 4 of the POCSO Act?

6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove the case against the accused person. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the

rival submissions, it would be appropriate to give a glance at evidence record.

- PW-1 is Shri Babu Bey who told that he is the 7. informant of this case. The victim is his daughter. The occurrence took place about three years back during Durga Puja at Jenkha Bazar. On that day at about 5/6 PM, the victim along with her friend, Sewali went out to Jenkha Bazar to enjoy Durga Puja and she came back home at midnight. Coming home back, his daughter informed him and his wife that the accused at 10 O' Clock of that night took her and her friend, Sewali from Jenkha Bazar in an auto-rickshaw towards Menmazi village. On reaching a field, the accused dropped the victim from the said auto-rickshaw and he took her to a place situated in between a village and sugarcane cultivation and raped her there. The victim also informed him that while she was taken down from the autorickshaw, her friend-Sewali somehow managed to flee away. Then he informed the Govt. Gaonburah about the occurrence and convened a "Mel" where the matter was discussed, but no decision could be taken. Thereafter, he lodged the ejahar at Kheroni Police Station. Police got his victim-daughter medically examined and her statement recorded in the Court. At the time of occurrence, his victim daughter was 12 years old. The Court handed over the victim girl to him. Ext.1 is the ejahar and Ext.1(1) is his signature.
- 8. PW-2 is Smti Sewali Engjaipi who has deposed that she knows the informant, the accused and the victim girl. The occurrence took place in the year 2013. On the day of occurrence in the afternoon, she along with the victim went to Jenkha to see Durga Puja. At Jenkha, they watched

movie. When the movie show was over, the accused-Ranjit Tisso came forward for taking them home in his autorickshaw. She and the victim on good faith got into the autorickshaw. When the auto-rickshaw reached in a lonely place situated in between two villages, the accused got it stopped. At that time, out of fear, they got down from the autorickshaw and started fleeing away. She somehow managed to hide herself in a jungle. From her hiding place, she saw the accused taking away the victim towards the jungle. At that time, she saw two boys coming on foot and seeing them, she came out of the jungle and sought help from them narrating the entire matter. Thereafter, she along with said two boys started searching the victim and during search, they found her crying in the jungle, but they did not find the accused there. On being asked, the victim told her that the accused raped her. Thereafter, they took the victim to their house. Staying there for some time, they took the victim to her house at midnight.

9. PW-3 is the victim who has deposed in her evidence that the informant is her father. She knows the accused person. On the day of occurrence at about 3:00 PM, she along with Sewali went to Jenkha for enjoying Durga Puja. They watched movie there. On ending of the movie, while they were waiting in a shop for going home back, the accused approached and asked them to get into his autorickshaw for going home back. Initially, they were reluctant to go home back by his auto-rickshaw. Ultimately under his pressure, they got into the auto-rickshaw to go home back. After completing half journey, the accused suddenly got his auto-rickshaw stopped in a lonely place and then out of fear, she and her friend got down from the auto-rickshaw and started running away. Her friend was fleeing away in the

opposite direction. The accused chased her and he managed to catch her. Thereafter, the accused took her to nearby jungle by holding her hair. Taking her into the jungle, the accused forcibly made her laid down on the ground and removed her undergarment. Thereafter, he forcibly made sexual intercourse with her. She raised hue and cry, but nobody came forward. Seeing her friend and some boys coming towards the jungle, the accused fled away leaving her there. Her friend and the boys took her to the house of Sewali. The said incident took place at about 10 PM. She spent the night in the house of Sewali and in the morning at about 5 O' Clock, she was dropped in her house. Coming to her house, she narrated all the happenings to her parents. A Bichar was convened in the village, but the matter was not settled there. Her father lodged the written ejahar with Kheroni Police Station. Police got her medically examined and her statement recorded in the Court. Ext.2 is her statement. Ext.2(1) and 2(2) are her signatures. At the time of occurrence, she was 12 years old and was reading in class-V.

- 10. PW-4 is Shri Babu Bey who has stated in his testimony that he knows the informant, but does not know the accused person. After about 10/15 days of the occurrence, he came to know that the daughter of the complainant-Babu Bey was raped by somebody. He knows this much only.
- 11. PW-5 is Dr Joydhan Timung who stated that on 26.10.2013 while he was serving as Medical & Health Officer at Kheroni SHC, he examined Smti. Purnima Beypi aged 12 years in presence of staff nurse and lady constable and found the following:

No violent marks are found in the private parts. Hymen of the victim was intact. Probable age of the victim was 12 years and her blood group was B(+ve). Vaginal swab was not collected since the alleged rape was happened on 12.10.2013. He did not find the sign of rape. He further told that actual age of the victim would be determined by forensic expert and hence the victim was referred to Diphu Civil Hospital. Ext.2 is the medical report and Ext.2(1) is his signature. PW-6 is Dr. Mercy Rongpharpi who told that on 31.3.2013 while she was working as Medical & Health Officer at Diphu Civil Hospital, she examined Smti Purnima Beypi for determination of her age. X-ray was done for determination of age. The age of the girl was approximately between 16 to 18 years. Dentist also examined the victim and found her age between 16 to 18 years. Ext.3 is medical report and Ext.3(1) is her signature.

12. PW-7 is Shri J.S. Khobung who has stated in his testimony that on 21.02.2013 he was working as Officer Incharge of Kheroni Police Station. On that day, he received the case diary. After perusal of case diary, he collected the birth certificate of the victim from the school of the victim girl. As per the birth certificate, the date of birth of the victim is 20.9.2001. Ext.4 is the birth certificate of the victim and Ext.4(1) is the signature of the Headmaster of Menmedi High school which he could recognize. His predecessorinvestigating officer almost completed the investigation and thereafter, on perusal of the case diary, he found sufficient materials under sections 376(2)(f) of IPC and 4 of the POCSO Act against the accused person and accordingly, he submitted the charge-sheet against him. Ext.5 is chargesheet and Ext.5(1) is his signature.

- 13. PW-8 is Shri Ananda Bey who has stated that he knows the informant and the victim. The occurrence took place about 5/6 years ago. At the time of occurrence he came to know that the victim was raped. Coming to the house of the victim he came to know that victim along with her friend went to see Durga Puja and that while they coming home back in the auto rickshaw of the accused, the accused suddenly got the auto stopped. The victim informed him that she was raped by the accused after taking her into a jungle.
- 14. PW-9 is Shri Badan Chandra Das who was one of the I.Os of the case. While he was working as OC of Kheroni Police Station, one Babu Bey lodged an ejahar stating the incident of rape of his daughter. He registered the PS case vide No.75/2013 under section 376(2)(F) and 4 of the POCSO Act and he himself took the charge of investigation. During investigation, he recorded the statement of the informant in the Police Station and brought the victim to the Police Station. While coming to the Police Station, the victim brought the clothes which she wore at the time of occurrence. He sent the victim to Kheroni SHC along with woman police for her medical examination. He also recorded the statements of the witnesses those who came to the Police Station along with the informant. He seized one skirt, one white colour T-shirt, one black undergarment and one white colour brassiere, which were worn by the victim at the time of occurrence, in presence of the witnesses. Thereafter, he went the place of occurrence with his staffs and drew a sketch map. As there was no any house nearby the place of occurrence, he did not find anybody to record statement. He searched the accused, but he was absconding at that time. On 26.10.2013 he seized the auto-rickshaw bearing registration No. AS-09-C-6271 along with the documents

like-registration card, fitness certificate, insurance certificate and permit in presence of the witnesses. He showed the seized articles before the Court. On 28.10.2013 the accused appeared in the police station and he arrested him and on that day, he got the accused medically examined. He prayed before the Court to record the confessional statement of the accused which was allowed by the Court. He also prayed before the Court to record the statements of the victim and Smti. Sewali Engjaipi. He collected a school certificate wherein the date of birth of the victim was written as 29.9.2001. He also collected the statements of the victim and the accused along with the medical certificates. Thereafter, on his transfer, he submitted the case diary at the PS. Ext.1 is the ejahar, Ext.6 and 8 are the seizure lists, Ext.7 is the sketch map. Ext.1(2),Ext.6(1), Ext.7(1) and Ext.8(1) are his signatures.

15. To attract any penal provision of the POCSO Act, the victim needs to be a child. According to the section 2(d) of the POCSO Act, a person who has not completed 18 years is a child. PW-1 is the informant who is the father of the victim. According to him, at the time of occurrence the victim was 12 years. Similarly the victim has stated in her evidence that at the time of occurrence she was reading in class-VIII and was 12 years old. PW-6 is the medical officer who examined the victim for determining her age on 31.10.2013 and opined that her age was 16-18 years. Ext-3 is the medical report. Ext-4 is the attested copy of school certificate which shows date of birth of the victim as 29.07.2001. According to Ext-4 at the time of occurrence the victim was 12 years 2 months 15 days. Statement of the victim examined under section 164 of the CrPC marked as Ext-2 also shows that at the time of occurrence victim was

12 years old. The defence has not disputed the evidence of informant and victim as regards age of victim. Hence it can be said that at the time of occurrence the victim was about 13 years old below 18 years. In view of the discussion made above I have come to conclusion that at the time of occurrence the victim was a child.

- 16. PW-3 is the victim whose evidence shows that when the victim and her friend got down from the auto rickshaw driven by the accused person out of fear while it was got stopped near a jungle far away from their village the accused took her inside the jungle by holding of her hair and thereafter he made her laid down on the ground and removed her panty. Thereafter the accused made sexual intercourse with her forcibly. The fact of the prosecution case remains that at the time of occurrence the victim and her friend Smti Sewali Ingipi were going back home in the auto rickshaw driven by the accused person. The prosecution has examined said Smti Sewali Ingipi as PW-2 whose evidence shows that the accused had taken away the victim inside the jungle. PW-5 is the Medical Officer Dr. Joydhan Timung who examined the victim on 26.10.2013 wherein the occurrence took place in 12.10.2013. His evidence clearly shows that he found hymen of the victim was intact and that he found no violent mark in the private parts and sign of rape.
- 17. It has been submitted by the learned defence counsel that on the basis of evidence of the victim available in the case record cannot be held that there was a penetrative sexual assault caused to the victim. There is no direct evidence from the victim available on the record show that the accused inserted his penis into the vagina of the victim.

In view of the discussion made above I find force in the submissions put forward by the learned defence counsel appearing on behalf of the accused person.

- 18. Ext-7 is the sketch map of the PO which shows that PO is sugarcane field. Ext-8 is the seizure list by which the auto rickshaw in question along with its documents was seized. Ext-6 is also another seizure list by which the wearing of the victim were seized which were being torn up.
- 19. It has been further submitted by the learned defence counsel that non examination of the two boys who after occurrence brought the victim and her friend to the house of her friend is fatal to the prosecution case. PW-7 and PW-9 are the Investigating Officer of this case. During their cross examination no question was asked as to why they failed to examined the said boys. Both PWs 2 and 3 have categorically stated that two boys brought them to the house of PW-2. It is the established rule that for proving a fact one witness is enough if his evidence inspires confidence of the Court. There are some minor discrepancies in evidence on record which are not at all on material points. There is no evidence on record showing that there is an enmity between the accused and family of the informant. Having very carefully gone through the cross examination of both PWs 2 and 3 I find nothing to disbelieve their evidences.
- 20. It is evident that immediate after occurrence the father of the victim took initiative to get the dispute settled through amicable but the accused not turned up. It is quite natural the villager initially tries to settle any dispute at the village level. PW-8 is the relative of the informant who has also

stated in his evidence that the victim informed him that the accused raped her.

- 21. Plea of the defence as reflected from the statement of the accused person recorded under section 313 of the CrPC is of totally denial. The defence has not let any evidence to
- 22. The section 18 of the POCSO Act related to punishment for attempt to commit an offence which read thus:-"18. Punishment for attempt to commit an offence.-Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both."
- 23. The section 4 of the POCSO Act relates to punishment for committing penetrative sexual offence which reads thus:"4. Punishment for penetrative sexual assault.Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 24. The section 3 of the POCSO Act relates to penetrative sexual assault which reads thus:- "3. 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 of a child or makes the child to do so with him or any other 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 of 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 of the child or makes the child to do so to such person or any other person."
- 25. In view of the discussion made above I find that the prosecution has succeeded in establishing its case under section 18 of the POCSO Act read section 4 of the POCSO Act beyond all reasonable doubts.

ORDER

- 26. In the result, I find the accused person Shri Ranjit Tisso guilty under section 18 of the POCSO Act read with section 4 of the POCSO Act and accordingly he is convicted.
- 27. On the point of sentence, the accused person is heard and to that effect his statement is recorded. It has been submitted by the learned lawyer appearing on behalf of the accused person that there is no evidence on record showing that the accused was previously convicted by the Court of Law and as such he deserves to be punished leniently. On the other hand, the learned Public Prosecutor has submitted

that the accused needs to be punished exemplary. It appears that the accused was a grown up man having children and that he committed the offence with a cool brain.

- 28. Taking all aspects into consideration I do hereby order the accused Shri Ranjit Tisso to undergo RI of 3 (Three) years. Set off earlier detention period. Return the seized auto rickshaw to its registered owner along with seized documents in due course of Law. Let the rest seized articles be destroyed in due course of Law. Let certified copies of the Judgment and order be furnished to the accused person at free of cost. Also send a copy of Judgment to the learned District Magistrate, Karbi Anglong, Diphu.
- 29. Accordingly this case is disposed of on contest.
- 30. Given under my hand and seal of the Court on this 17th August, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS) Special Judge Diphu, Karbi Anglong (Md. A.U.Ahmed, AJS) Special Judge Diphu, Karbi Anglong

APPENDIX

Prosecution Witnesses:

- PW1- Shri Babu Bey
- PW2- Smti Sewali Ingipi
- PW3- Miss Purnima Beypi
- PW4- Shri Babu Bey
- PW5- Dr. Joydhan Timung
- PW6- Dr. Mercy Rongpharpi
- PW7- Shri J. S. Khobung
- PW8- Shri Ananda Bey
- PW9- Shri Badan Chandra Das

Defence Witnesses: Nil

Prosecution Exhibited:

- Ext.1- Ejahar
- Ext.2- Medical Examination Report
- Ext.2- Statement of the Victim
- Ext.3- Medical Report
- Ext.4- School Transfer Certificate
- Ext.5- Charge Sheet
- Ext.6- Seizure List
- Ext.7- Sketch Map
- Ext.8- Seizure List

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam.