IN THE COURT OF SPECIAL JUDGE (FTC), SONITPUR AT TEZPUR

SPL(POCSO) CASE NO. :- <u>05 of 2017</u>

(Under Section 18 of Protection of Children From Sexual Offence (POCSO) Act, Arising out of GR Case No 2187 of 2016)

Present :- R. Baruah

Special Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- Sri Ashok Tanti,

S/o Late Dhanu Tanti, Resident of Ghoiralibagan,

PS – Rangapara, Dist- Sonitpur, Assam

Date of framing charge :- 19-06-2017.

Date of Recording Evidence :- 30-06-2017, 23-04-2018, 08-06-2018 &

26-02-2019.

Date of examination of accused

u/s 313 of Cr. P.C :- 30-05-2019.

Date of Argument :- 01-06-2019.

Date of Judgment :- **24-06-2019**.

Counsel of the Prosecution :- Mr A Baruah & Mrs J Baruah,

Learned Addl. Public Prosecutors,

Tezpur.

Counsel for Accused :- B Borthakur,

Learned Legal Aid Counsel.

<u>JUDGMENT</u>

1. In this case accused Sri Ashok Tanti is put for trial for the allegation of charge under Section 18 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act').

- 2. The prosecution case in brief is that on 09-07-2016 informant Manjita Karmakar lodged FIR before the Rangapara PS stating inter alia that on 02-06-2016 her minor daughter (aged about six years) Miss "X" (named changed in the judgment), who is a deaf and dumb girl was called by the accused to his home and tried to outrage her modesty. At that moment, the informant went to the house of accused in search of her daughter and noticed her daughter in naked condition and on seeing her the accused fled away from his house. As the matter was placed before the people for settling the matter, delay occurred in filing the case.
- 3. On receipt of the ejahar, OC, Rangapara Police Station registered the case vide Rangapara PS case No. 76/16 under Section 354-B/511 of IPC, r/w Section 12 of POCSO Act. Police, after completion of investigation, submitted charge sheet against the accused Ashok Tanti under Section 354-B/511 of IPC, r/w Section 12 of POCSO Act for trial.
- 4. On appearance of the accused and after hearing the learned Advocate for both the sides, charge under Section 18 of POCSO Act framed against the accused. The above charge is read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution has examined as many as 5(five) nos. of witnesses including the informant namely 1. Sri Suresh Tanti(PW1), 2.Smti Manjita Karmakar(PW2), 3.Smti Dina Tanti(PW3), 4.Smti Madhuri Karmakar(PW4) & 5.Sri Basanta Kr Borah(PW5), IO and one examined by court as court witness, namely Sri Budhuwa Karmakar (CW1).
- 6. Accused was examined under section 313 Cr.P.C. The defence plea is of total denial and declined to adduce defence evidence.
- 7. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.
- 8. The point for decision in this case is that
 - (1) "Whether the accused, on 2-6-2016 (Thursday), at Moirali under Rangapara PS,

attempted to commit any offence punishable under the POCSO Act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence, on Miss "X" (6 years deaf and dumb girl)?

Reasons, decisions and reason for decision:

- 9. Before appreciating the evidences adduced by the parties, I deem it fit to reflect the summaries of evidence of the witnesses.
- 10. **PW1** said that he knows both accused and the informant. The informant used to reside in the same house with the accused in different parts. The incident took place about eight months ago. While he returned from his duty at around 4.30 PM, he heard quarrel taking place between accused and the informant. He heard that accused caught victim's child. The mother of victim told him that she noticed the accused holding her daughter (victim) while there were no clothes on the body of the child. Prior to the quarrel the accused had been to the hospital and the quarrel took place while returning from the hospital. During investigation, police seized one Photostat copy of birth certificate of victim. At that time he was present and he put his signature in the seizure list. Ext.1 is the seizure list.

In his cross examination he said that the mother of the victim told him that accused was playing with the victim taking the victim in his lap. He has not seen if there was any cloth on the body of the victim or not. At the time of putting his signature in Ext.1, police told him that it is taken as a proof that police came to the place of occurrence, so, he can put his signature. He does not know about the contents of Ext.1.

11. **PW2** the informant of this case said that she knows the accused. She and accused reside in the same house in different parts. Victim is her daughter and at that time her age was 6 years. The incident occurred about one year back at around 11.00 AM. At that time she was in her house and her two daughters were playing in the courtyard. As she did not see her daughters, she called her younger daughter and asked for victim, then, she replied that victim is in the house of accused. She went to the house of accused and saw her daughter (victim) in naked condition and the accused attempted to rape her. At that moment she went to the

place and brought her daughter to her home and the accused fled away from his house. She informed the matter to her neighbor Madhuri and she also told about the incident to her husband at about 2.00 PM while he returned from work. She also informed Prakash Kishan, Dilip Tirki and some other persons of the village. The villagers assured her to settle the matter, but no sitting for settlement took place. After 4/5 days she saw the accused and assaulted him. After the assault the accused went to the Hospital of the Tea Estate. She informed the matter to the Manager of the Tea Estate. As the matter was not settled, she lodged FIR before Rangapara PS. Ext.2 is the ejahar. After receiving the ejahar police visited the place of occurrence. She furnished a Photostat copy of birth certificate of victim to the police. Police seized the same vide Ext.1. As the victim is a deaf and dumb girl, her statement was not recorded by police.

During her cross examination, PW2 said that she and the accused reside in the same quarter in different part. There are three rooms in each part. There are three members of accused and they have five members. The latrine and bathroom are separate for each family. The victim do not what she is wearing nor does she know to wear or take off clothes. The incident took place during summer days. The house of accused and her house are like same family. Both the families were in visiting terms and the relation was cordial. No clothes of her daughter or clothes of accused seized by the police.

The PW2 denied that she stated to police that as informed by her younger daughter she went to the house of the accused and noticed that there is no clothes on the body of the accused and her child and accused attempted to rape the girl. When she told the Manager, he informed the police by phone. Police recorded her statement and the statement of the accused, Madhuri Nayak and husband Budhuwa. PW2 said that she lodge the FIR after one month of the occurrence. Budhuwa put his signature in English. PW2 denied that Budhuwa never lodged FIR. House of Madhuri Nayak is situated near her house. She denied that she did not state to the police that except Madhuri Nayak she did not disclosed the fact to other. She assaulted the accused in the house and accused informed the matter to the Manager. After one month of this incident she lodge the FIR. PW2 denied that no incident took place and she lodge the case only to save herself from the case of assault on the accused. PW2 denied that no meeting took place in the Tea Estate regarding the incident.

- 12. **PW3** stated that she knows the informant, victim and the accused. She said that she do not know anything regarding the incident. She is not cross examined by the defence.
- 13. **PW4** said that the incident took place about two years ago. She said that the mother of victim reported her that accused in his house open the pant of her victim daughter, who is aged about 5 years. During investigation, IO has seized one birth certificate of victim. At the time of seizure of the said certificate, she was present. Ext.1 is the seizure list. She has seen the Photostat copy of said seized certificate.

During cross examination, the PW4 said that at the time of seizure of the birth certificate, she has not seen the said certificate. Victim, accused and they resides at the same village and they are neighbors. Even family members of aforesaid three families have visiting terms with each other. Accused has a child almost the same age of victim. Later on, she came to know that accused opened the pant of victim as her pant was stained with mud.

14. **PW5**, the investigating officer said that on 09-07-2016 he was posted as SI of police at Rangapara police station. On that day, one Manjita Karmakar lodged an ejahar before the Rangapara police station and OC of Rangapara PS entrusted him to investigate the case. Accordingly, he visited the place of occurrence, prepared the sketch map and recorded the statement of the witnesses under Section 161 of CrPC. Ext.3 is the sketch map. He has also seized one birth certificate of the victim in presence of the witnesses. Ext.1 is the seizure list. Photostat copy of the seized birth certificate is enclosed with the case record. As he has retired from the service, the case diary along with all the documents handed over to the then OC, Rangapara Police Station.

In his cross examination he said that on 10-07-2016, he has prepared the sketch map of the place of occurrence. The incident took place on 02-06-2016 and the ejahar was received on 09-07-2016 at about 9.15 PM. In the FIR it was stated that as the informant has informed the matter to local public, so informant being depend upon the local public, there is delay in lodging the FIR. As the victim was deaf and dumb girl he has not recorded her statement under Section 161 of CrPC. He has not made attempt to record the statement of the victim through the interpreter. He has recorded the statement of Madhury Nayak, Rina Tanti and Suresh

Tanti as their names were mentioned in the sketch map. He has also recorded the statement of complainant. Other than them, he has not recorded the statement of other witnesses. In connection this case, he has not seized any wearing apparels of the victim. He has searched for the original birth certificate, but, the complainant submits the Photostat copy of the birth certificate.

- 15. CW1 is the father of the victim. He stated that victim is his elder daughter. Presently her age is about 7(seven) years. She is deaf and dumb girl. He has not enrolled victim in a formal deaf and dumb school. Victim at any time remains with her mother. Her mother (i.e. his wife) is a housewife. The mental development of victim is very slow. Victim cannot express her needs and hence, his wife use to provide victim the needs and care in a routine manner. Victim used to get frightened in a crowd. After 2 ½ years her mental development has slowed down. There is no one to whom his daughter used to express her mind. Victim cannot express her hunger or thirst. Victim does not know about her relation with her siblings. Up to 2 $\frac{1}{2}$ years victim attended Anganwadi School. At that time she used to call him and his wife as "baba" and "ma" respectively. Thereafter, her mental development has slowed much. Thereafter she stopped calling them. They consulted the doctor of GMCH and thereafter provided medication for 1 ½ years. Nothing has changed. The incident of present case took place about 2 ½ years ago. At that time her age was about 5 years.
- 16. The following is mentioned in the order sheet of the court after recording the statement of the CW1,
 - " Learned advocate for the accused is present. The case is taken up in camera.

The parents of the victim appeared before the Court with the victim. The evidence of victim could not be recorded. Hence, the father of the victim is examined as Court witness. The father of the victim stated that after attaining 2 ½ years of age, gradually the mental development of victim has decreased. He also stated that the victim cannot express her mind and they used to fulfill the daily need of the victim in a routine manner. It is also informed by the father of victim that victim up to 2 ½ years of age attended Anganwadi and thereafter victim stopped calling him and his wife.

Attempts have been made to communicate with the victim in presence

of learned advocates for both the side and parents of victim. It is found that statement of victim cannot be recorded as victim does not express herself in any manner."

- 17. I have carefully gone through the record and heard the learned Advocates for both sides. The learned Addl. PP during argument pleaded to consider the following facts:
 - a. That the victim cannot speak. At that time her age was 6 years.
 - b. The PW1 is reported witness, who resides near the house of PW2(informant),
 - c. The PW2 witnessed the incident,
 - d. The accused fled from the place of the incident. Hence, the conduct of the accused be noted,
 - e. The incident occurred during day time,
 - f. As the victim cannot speak, police could not record her statement,
 - g. The PW4 said that as reported by PW2, the accused opened the pant of the victim,
 - h. The delay in lodging the FIR is natural, considering the nature of offence.
- 18. The learned Advocate for the accused argued as follows:
 - a. As per the sketch map prepared by the IO, the quarter of informant and accused is adjacent to each other i.e. in the same quarter in two parts.
 - b. The evidence reflects that the accused has also got children and there is visiting terms between the families. The accused just lifted the victim.
 - c. The date of alleged occurrence is 02-06-2016 and FIR lodged on 09-07-2016. The PW2 said that Manager of the Tea Estate was informed prior to lodging FIR, but, the Manager is not examined by the prosecution. No reason is there for delay in reporting.
 - d. The victim is immature. The victim remaining naked is not a big question. The pant of victim not seized by the police. Statement of PW2 and Madhuri are different. None supported the PW2.
 - e. Accused had no intentions. Accused admitted of opening the pant, as the same was dirty.
 - f. The case is lodged against the accused only to harass him.
- 19. In the present case it should be remembered that incident occurred

while the victim was about five/six years of age. As per the father of the victim, she cannot express herself in any manner. The victim's mental development is very slow. The victim even cannot express her hunger or thirst. After attaining the age of 2 $\frac{1}{2}$ years, the victim stopped addressing her parents as "Ma" and "Baba".

20. The PW2 is the mother of the victim and also the informant. She said that while searching her victim daughter, she went to the house of accused and noticed that her daughter is undressed and accused attempted to rape her. Thereafter, she brought her daughter and told about the fact to neighbor Madhuri. Thereafter, at 2.00 PM she told her husband (who returned from work) and villagers Prakash Kishan, Dilip Tanti and others. They proposed to settle the matter but, no meeting took place in the village. After 4-5 days she saw accused and she beaten him and then accused went to the hospital of Tea Estate. She then informed the fact in writing to the Manager of the Tea Estate.

The PW2 said that just after the incident, she informed the PW4 (Madhuri). The PW4 on the other hand said that PW2 in fact informed her that accused opened pant of victim. In cross examination PW4 said that later on she came to know that accused opened the pant of the victim, as the same stained with mud. The PW4 said that her family, families of informant and accused are neighbors and all members visit each other's house.

The PW4's evidence is somewhat material in this case. The PW2 is specific that she informed the incident, just after occurrence, to the PW4. The PW4 has not corroborated to the fact that accused attempted to rape the victim. The PW2 has not specified whether at the time of occurrence, the accused was wearing his clothes or not. It is not clear why the PW2 did not narrated the complete facts to the PW4, if in fact she informed the matter to PW4. Why the PW4 was not told by PW2 that accused attempted to rape the victim?

The PW1 said that he was informed by the PW2 that accused was lifting the victim in his lap and playing with her. The PW1 also did not mention that the PW2 informed about the attempt made by accused to rape the victim.

21. The FIR in connection with the occurrence filed after more than 1(one) month. In the FIR it is mentioned that the matter was placed before the villagers for decision and hence, delay occurred in lodging the FIR.

There are judgments of Hon'ble Higher Courts that delay in lodging FIR may be caused due to various reasons. It is to be considered on the basis of facts in each case. In case of incident involving sexual assault, there may occur delay in informing the authority as it takes time for the family or victim to cope with the situation after the trauma. However, the evidence is to be examined to see whether there is sufficient reason for delay in lodging the FIR. As per FIR, the incident occurred on 02-06-2016. The FIR filed on 09-07-2016 i.e. after 1(one) month 7(seven) days of incident. During examination, the PW2 (informant) said that after 4-5 days of incident, she found accused and beaten him. Then accused went to the hospital. Thereafter, she informed the matter to the Manager of the Tea Estate in writing. And as no decision taken, she lodged the FIR. These shows that informant waited for about 1(one) month to lodge FIR, after the matter is placed before the Manager of the Tea Estate. The prosecution has not examined any witness to show that the matter was informed to the Manager. It is clear that PW2 informed the Manager after assaulting the accused. The PW2's evidence shows that due to assault by her the accused had to go to the hospital. The PW1 said that a quarrel took place between the informant and accused after accused came from the hospital. The PW1 said that he heard that accused held the victim while there was no cloth in her body. The evidence of PW4 do not reflect about the PW2 assaulting the accused, which forced the accused to go to the hospital. No villagers are examined by the prosecution to show that just after the incident, they were approached by the PW2 for a settlement. The other prosecution witnesses also did not mentioned that they were aware about the PW2 approaching the villagers for a settlement.

The chronology of event laid by the PW2, there is scope for the defence to argue that after assaulting the accused, he was implicated in an imaginary fact allegedly occurred much before the assault of accused by the PW2. No evidence is there to show that the PW2 approached the Manager of Tea Estate. The PW2 had considered it fit to approach the authority(Garden Authority) just after 4-5 days of incident, there is no reason apparent, why the delay for more than 1(one) month occurred in informing the police.

Hence, the explanations for delay in informing the police cannot be accepted.

The question of delay is to be noted minutely because it gives the complainant scope for developing and embellishing the facts. The FIR has not mentioned about informant approaching the Manager of the Tea Estate. The FIR did not mention about the informant assaulting the accused after 4/5 days of incident. It

is clear that the informant filed the FIR after she assaulted the accused (as per her own admission). The witnesses of the prosecution has not corroborate to the vital parts of the allegations i.e accused attempted to rape the victim and the victim was found without any clothes.

- 22. In view of the above discussions and reasons it is held that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. Hence, the accused **Ashok Tanti** is acquitted and set at liberty forthwith.
- 23. The bail bonds shall remain in force for six months from today.
- 24. Copy of this judgment be sent to the learned District Magistrate, Sonitpur, Tezpur as per provision of Section 365 of CrPC.

Given under my Hand and Seal of this Court on this the $\mathbf{24^{th}}$ day of **June, 2019**.

(R Baruah) Special Judge Sonitpur,Tezpur.

Dictated and corrected by me.

(R Baruah) Special Judge, Sonitpur, Tezpur

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

<u>ANNEXURE</u>

Witnesses examined by the prosecution:

- 1.PW1 Sri Suresh Tanti,
- 2.PW2 Smti Manjita Karmakar (informant),
- 3.PW3 Smti Dina Tanti,
- 4.PW4 Smti Madhuri Karmakar &
- 5.PW5 Sri Basanta Kr Borah(PW5), IO.

one examined by court as court witness, namely Sri Budhuwa Karmakar (CW1).

Witnesses examined by the Defence:

1.Nil.

Documents exhibited by the prosecution:

- 1. Ext. 1 : Seizure list,
- 2. Ext. 2 : Ejahar &
- 3. Ext. 3 : Sketch map.

(R Baruah) Special Judge, Sonitpur,Tezpur.