

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
Special Judge,
Dhemaji,

JUDGMENT IN SPECIAL (POCSO) CASE NO. 2(DH) 2015.

U/S 8 of POCSO Act.

(G.R. Case No.566/2015 (SLP); Silapathar P.S. Case No.167/15 u/s 376/511 IPC)

The State of Assam

- Versus -

Shri Promud ChangmaiAccused Person

S/O Lt. Tepuram Changmai,,
R/O Nilakh Barbam Gaon,
P.S-Silapathar,
Dist.- Dhemaji (Assam)

Appearance:

Shri A. Fogla,

Public ProsecutorFor the State

Shri N. Buragohain, AdvocateFor the Accused

Dates of prosecution evidence : 23-06-2016, 05-10-2016, 10-01-2017,

18-03-2017, 30-10-2017, 20-03-2018.

Date of arguments : 24-10-2019.

Date of Judgment : 21-11-2019.

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JUDGMENT

1. The prosecution case in brief is that on 05-07-2015 complainant-Shri Jayanta Gogoi lodged an ejahar with Sissiborgaon Police Out Post under Silapathar Police Station alleging interalia that on 04-07-2015 at about 1 PM. in the afternoon while his minor daughter-Smti 'X' aged about 6 years was going to the house of the accused-Promud Changmai to eat mango, the accused called his daughter to come inside his house and he tried to commit rape on her. The accused also threatened his daughter not to disclose the fact to anybody, else he will kill her. Thereafter, the accused gave her a mango and sent her home.
2. On receipt of the ejaha, I/C, Kuladhar KOnwar of Sissiborgaon Police Out Post made GD Entry vide No. 63 dated 05-07-2015 and forwarded the same to O/C, Silapathar Police Station for registering a case under proper sections of law. He (I/C) himself took-up investigation of the case. On receipt of the ejahar, O/C, Silapathar Police Station registered the case vide Silapathar P.S. Case No. 167/2015 u/s 376/511 of IPC. On completion of investigation police submitted final report with a prayer to release the accused Shri Promud Changmai from the case as the I.O. could not find sufficient materials against the accused.
3. However the complainant filed protest petition before Ld. CJM, Dhemaji and Ld. CJM transfer the case to Ld JMFC, who recorded statement of complainant/victim and witnesses u/s 200 Cr.P.C. and on consideration of their statements Ld JMFC held that the case u/s 375/511 Read with section 8 of POCSO Act made out against the accused and accordingly Ld. JMFC committed the case to the Court of Sessions.
4. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s Sec. 8 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 9 witnesses including the I/O and M/O. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of total denial. However, defence declined to adduce evidence in support of the plea.

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5. Point for determination :

(1) That you, on 4-7-2015 at about 1.30 PM at Village-NIlakh Barbam under Silapathar Police Station, inside your house committed sexual assault on **Smt. "X"**, a minor girl aged about 6 years and thereby you committed an offence punishable u/s 8 of POCSO Act.

6. I have gone through the evidence on record and heard arguments of both sides.

Discussion of Evidence:

7. **PW1 Smt. Nizara Gogoi** stated that she knows the accused. Complainant-Jayanta Gogoi is her husband and Smt. 'X' (victim) is her daughter. The occurrence took place about one year ago (from the date of her deposition). In her absence at house the accused came to her house and called her daughter. There were other two girls along with her daughter (victim). Accused sent the other two girls as their mothers called them. Victim told her after coming back home that accused took her inside his house and told her that he would give mango to her. Then he laid her on bed and asked her to touch his penis. She (victim) refused to touch his penis and then the accused pushed his penis into her vagina. Accused asked the victim not to disclose the fact to any other person. Accused also told her that if she discloses the fact then he will beat her while going to her school. Then the victim 'X' returned home. She told her mother about the incident. She (PW1) also told about the incident to her husband when he came home at about 7.30 PM. Next day, they informed the matter to VDP. Accused was the Adviser of VDP. So, they informed the matter to the VDP Secretary and the President. VDP President advised them to inform the matter at the Police Station and accordingly, her husband filed ejahar at the Police Station.

In cross-examination PW1 stated that Police recorded her statement. PW1 denied the defence suggestion that she did not state before police that the accused rubbed his '**'Susu'** (penis) on her vagina. She also denied the defence suggestion that due to the land dispute her husband filed false case against the accused and she has given false evidence. She further denied the defence suggestion that the victim Smt. 'X' did not tell her about the incident.

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8. **PW2 the victim Smti 'X'** stated that she knows the accused. She called him as '**Dodow**'. Jayanta Gogoi is her father. One day the accused called her to his house to eat mango. Sabita was also along with her. The accused gave a mango to Sabita and sent her to her house telling her that her mother called her. Accused assured her (victim) that he will give her more mangoes to her and he called her inside his house. Then he asked her to touch his penis. Accused also kissed her. Thereafter, she came back home. Later, she (victim) told her that the accused rubbed his penis to her vagina. He also asked the victim not to disclose the matter to others and if she discloses the fact, then he will beat her up when she will be going to school. She told about the incident to her mother after coming back home. Her mother told about the incident to her father. Doctor examined her medically. Magistrate also questioned him about the incident.

In cross-examination PW2 stated that she is coming today to give evidence in the Court. She stated that she also stated before Magistrate and Police the true facts. She denied the defence suggestion that the accused did not kiss her and did not rub his penis to her vagina. It is denied that she has given false evidence. Further, she denied the defence suggestion that the accused sent her home after giving mango to her, and did not do anything to her.

9. **PW3 Smti Aruna Gogoi** stated that Jayanta Gogoi is her son and the victim Smt. 'X' is her granddaughter. The occurrence occurred in the year 2015. Victim Smt. 'X' and another girl Sabita Gogoi had gone to accused's house. Accused gave a mango to Sabita and sent her home but said that he will pluck some mangoes and send to the victim later. Then accused took the victim inside and threw her on a bed and raped her. Victim told her about the incident after coming home. Then she informed the mother of the victim who told the VDP Bitu Gogoi. VDP asked them to file the case at the police station. Police came and questioned her and Police questioned her. Police got her statement recorded u/s 164 Cr.P.C. Exhibit-2 is the 164 Statement and Ext-2(1 and 2) are her signatures.

In cross-examination PW3 denied the defence suggestion that she did not tell the police that the victim Smt. 'X' had told her about the incident. She admitted that she had not seen the incident. She had come to Court along with the victim. She also denied the defence suggestion that the accused did not rape the

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victim 'X' and he had sent her home by giving her the mangoes. The victim was about 9 years at that time.

10. **PW4 Dr. Chandrajit Doley** stated that on 6-7-2015 he examined the victim Smt. 'X' at Silapathar Model Hospital at about 6.40 PM on police requisition on being escorted and identified by Purnima Saikia. On examination, he found no any mark of injury on the body of the victim girl. Exhibit-3 is the Injury Report and Ext-3(1) is his signature.

Defence declined to cross-examine the Doctor (PW4).

11. **PW5 Shri Jayanta Gogoi** stated that he knows the accused. Victim Smt. 'X' is his daughter. Occurrence took place on 4-7-2015 at about 1.30 PM. Victim and another girl Kabita Gogoi had gone to the house of Hahiram Gogoi to see the slaying of a pig. Accused-Promod Gogoi called the victim and Kabita to his house to have mangoes. Then the accused took the victim to his bed and kept Kabita busy by giving her a mango and told her not to come inside. Then the accused opened her pant and raped her. Victim shouted and then the accused gave her a mango and sent her home saying that if she tells anything, he will beat her. Then victim and Kabita came back home and told his mother Karuna Gogoi about the incident. At that time he was in the field. His mother told his wife Nizara Gogoi and she rushed to the field and informed him about the incident. Then he informed the VDP Bitu Konwar, President, who came to his house. Next day he filed the ejahar. Police came and arrested the accused. Victim Smt. 'X' was examined medically. At the relevant time of incident, the victim was 6 years old and he had given the birth certificate of victim to the police. Her (victim) other name is Monika. Police seized the birth certificate.

Exhibit-4 is the FIR and Ext-4(1) is his signature. Ext-5 is his 164 Statement and Ext-5(1-2) are his signatures. Exhibit-6 is the Birth Certificate which has been compared with the original.

In cross-examination PW5 stated that he had told the Police that the 2 girls had gone to see the slaughter of the pig. There is no girl named Manju. He did not tell the Police that she had gone with Monjumoni. The house where the pig was cut is one house from the house of the accused. Victim told him about the

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incident the next day after the incident. He denied the defence suggestion that he had not told the police that his wife had informed him in the fields. Police came on 5th only and questioned them. He had received a notice from the Court. This is not a new case. He denied the defence suggestion that they had a fight and that he has falsely implicated the accused.

12. **PW6 Smt. Dhanada Gogoi** stated that the occurrence took place about 2 years ago. Victim Smt. 'X' and 2 other girls had gone to eat mangoes in accused's house. Two other girls named Kabita, the other one she forgot, had gone with her. Accused gave mangoes to the other girls and sent them back. Then accused took the victim to the room saying that he will give her a lot of mangoes and then opened her pant and tried to do bad thing with her. Victim came and told her about the incident. She was her (victim) aunt and so she told her. Then she (PW6) told her grandmother Aruna Gogoi and they called VDP and others. VDP asked them to go to the O/C and so they informed them (Police). Police questioned her.

In cross-examination PW6 denied the defence suggestion that he told the Police that Promod Changmai had tried to rape her. Victim Smt. 'X' had said that some white substance had come out. She denied the defence suggestion that she had told the police that she had heard about the incident only when the victim told before the police. She was the first one to have heard about the incident when the victim told her. She also denied the defence suggestion that she did not tell the police that the victim had told her about the incident. She denied the defence suggestion that she has lied as she is her (victim) aunt.

13. **PW7 Smti Bhani Gogoi** stated that the occurrence took place about one year ago. Accused tried to commit rape on Smt. 'X' (victim) when she went to accused's house along with two girls to have mangoes. Accused had lifted the victim and took her to the bed and opened his pant and touched his penis to her private parts. Victim had told before the Police and VDP. Police questioned her.

In cross-examination PW7 stated that she had gone when police had come. Victim 'X' had earlier also come to her house and told her about the incident. She denied the defence suggestion that the victim did not tell her about the incident

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before also and that she had come to her house, she did not tell the police about opening of the pant and touching her private parts. She denied the defence suggestion that she has lied in court today as tutored by her by victim's parents. She also denied the defence suggestion that the victim had told her that the accused had tried to rape her only and not about him committing rape itself. She is not related to the victim Smt. 'X'.

14. **PW8 Smt. Kushum Gogoi** stated that complainant Jayanta Gogoi is his son. Accused is known to him. Victim Smt. 'X' is her granddaughter. Occurrence took place in the year 2015. On the day of occurrence at about 8 AM the victim girl along with one Sabita went to the village Tiniali. Accused then called them to his house and gave some mangoes and told Sabita that the victim 'X' will help him to pluck his ripe hair. Then Sabita left his house with the mangoes and the victim stayed in accused's house. At about 11 AM victim came back and went to the house of her husband and she told about the incident to her friends. The second wife of her husband then heard about the incident and asked the victim as to what happened but she did not say anything. Then Aruna Gogoi (2nd wife) of her husband came to her and told her that something had happened to the victim Smti 'X'. Thereafter, the victim came to her house. But, she could not get any chance to ask her about the incident. Next day, she asked the victim as to what happened. The victim stated that on the day of occurrence she along with Sabita went to accused's house and he gave some mangoes to Sabita and asked the victim to help him to pluck ripe hair at his house. After Sabita had left, the accused on the pretext of plucking of ripe hair, took the victim inside his house and put her on a bed and removed her clothes and had sexual intercourse with her (victim). At the time of occurrence victim was aged about 8 years only. Then she told victim's mother about the incident and her (victim) mother told her husband about the incident. Thereafter, complaint was lodged in police station by the mother of the victim. Police arrived and recorded her statement.

In cross-examination PW8 stated that Jayanta Gogoi is her son. Aruna Gogoi is the 2nd wife of her husband. She denied the defence suggestion that Aruna Gogoi circulated false news and they lodged a false complaint against the accused. It is also denied that as nothing happened to the victim, she could not give any

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statement u/s 164 Cr.P.C. against the accused. She does not know if police submitted final report finding no case against the accused. She denied the defence suggestion that they filed protest petition to harass the accused and to make a case they tutored the victim and accordingly, she gave statement before Magistrate. Further, she denied the defence suggestion that the victim did not tell her about the incident.

15. **PW9 Shri Kuladhar KOnwar** stated that on 5-7-2015 he was posted as I/C at Sissiborgaon Police Out Post under Silapather Police Station. On that day, he received an ejahar from one Jayanta Gogoi. Then, he made G.D. Entry No.63 dated 5-7-2015 and forwarded the ejahar to the O/C, Silapather Police Station for registering a case. Accordingly, O/C, Silapather PS, registered a case Vide Silapather P.S.,Case No. 167/2015 u/s 376/511 of IPC and endorsed him for investigation of the case. During investigation he visited the place of occurrence, recorded statement of the witnesses, drew a sketch map of the P.O. and sent the victim for medical examination. He got the statement of the victim recorded by the Magistrate u/s 164 of Cr.P.C. He arrested the accused and forwarded him to the court. Thereafter, he collected the medical report of the victim. After considering the materials collected in the case, and consideration with the superior officer, he submitted final report as no case against the accused made out.

Defence declined to cross-examine PW9.

Appreciation of Evidence :

16. From the discussion of the evidence on the record it appears that the victim has been examined as PW 2 in this case. From her evidence in chief it appears that on the date of occurrence victim along with her friend Sabita went to the house of the accused. Sabita left her company and went back home and the accused took the victim in side his house saying that he would give her mango to eat. Inside the house accused sexually abused her, he kissed her on her chick and made her touch his penis and he also touched her vagina with his penis. PW2 has been cross examined by defence she denied defence suggestion that accused didn't sexually abuse her.

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17. PW2 also gave statement before magistrate u/s 164 Cr.P.C. In her statement u./s 164 Cr.P.C. she stated that on the date of occurrence she along with her friends Sabita and Kabita went to tiniali to roam about there. Then she came back and had her meal at home. Then she started playing with her friends and then she along with her grandmother went to field to fetch cow after she returned home from field she read her books and then she had dinner and then she went to sleep. She also stated that while she was studying one Mangala Mama and his brother were watching TV.

18. PW5 is the complainant. In his evidence stated that he came to know from his daughter that on the date of occurrence accused called his daughter and one Kabita to his house to eat mango and then his sexually abused his daughter. Then he lodged the FIR with the police station. PW1 is mother of the victim made same statement as PW5. Evidence of PW3, PW6, PW7 and PW8 are hearsay. Coming to the evidence of the I.O. it is found that the I.O. received the ejahar and registered a case and then took up investigation. During investigation he arrested the accused, got the victim medically examined and also had her statement recorded u/s 164 Cr.P.C. After completion of investigation he found no incriminating materials and submitted final report.

19. I have carefully considered the evidence on record. From the evidence of PW1 it is found that in her evidence she has brought allegation of sexual assault by the accused on her though she has absolutely made no allegation of sexual assault against the accused. Her evidence is quite contradictory and as such cannot be accepted as reliable. Evidence of other witnesses is hearsay. So far evidence of PW4 is concerned he examined the victim but didn't find any mark of injury on the person of the victim.

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20. I view of what has been discuss above I find that prosecution has failed to prove charge of sexual assault u/s 8 of POCSO Act against the accused beyond all reasonable doubt.

ORDER:

21. In the result I find the accused **Sri Pramud Changmai** not guilty u/s 8 of POCSO Act. Accordingly he is acquitted of the charge. Set him at liberty forthwith.
22. Judgment is pronounced in open Court.
23. Given under my hand and seal of this Court on this the **21st day of November/2019.**

S. Das
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(S. Das)
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Special Judge,
Dhemaji,
Dhemaji.