# 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. 16/2015/ Sessions

Case No. 61/2016 corresponding to GR

Case No. 1091/2015 & Manja Police

Station Case No. 59/2015

Under section 4 of the POCSO Act

State of Assam

Versus

Shri Duta Sing Difusa

# Name of informant/complainant:

Shri Premananda Hasnu

S/O Late Phul Sing Hasnu

Village: Kheroni

PS: Manja

District: Karbi Anglong, Assam

# Name of the accused person facing trial:

Shri Duta Sing Difusa

S/O Late Iron Sing Difusa

Village: Kheroni

PS: Manja

District: Karbi Anglong, Assam

# **Advocates appeared:**

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

For the defense : Mr S. Boro

Argument heard on : 29.08.2019

Judgment pronounced & delivered on: 03.09.2019

## <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 30.11.2015, the informant-Shri Premananda Hasnu lodged an ejahar with the O/C of Manja Police Station stating inter alia that on 29.11.2015 at about 5:00 PM while his victim daughter aged 8 years was enjoying television in the house of Shri Ranjit Bodosa with her friends, she went outside to attend natural call, the accused gagged her mouth and brought her to the backside of the house of Ranjit Bodosa and raped her. Later on, his daughter managed to free herself from the clutches of the accused and arriving at house, she told everything before them. On receipt of the ejahar, O/C Manja Police Station registered a case vide its Police Station case No. 59/2015 under section 376(f) IPC R/W section 4 of the POCSO Act. On completion of investigation, I.O. submitted the charge-sheet under sections 376(a) of IPC and 4 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the accused person, copy was furnished to him and this case was committed to the Court of the then Sessions Judge, Karbi Anglong, Diphu as it was sessions triable. Thereafter, this case was transferred to this Court for disposal. On perusal of the case record along with case diary and after hearing learned lawyers of both sides, I found sufficient grounds 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 trial, Prosecution has examined as many as 10 (Ten) witnesses including the informant and the alleged victim. Statement of the accused person was recorded under section 313 of CrPC. Defence declined to adduce evidence. Plea of defence is of total denial.

## 5. **Points for determination are:**

Whether the accused person on 29.11.2015 at about 10:00 PM in the backside of the house of Ranjit Bodosa situated at Village Kheroni under Manja Police Station caused penetrative sexual assault to victim aged 8 (eight) years and that he thereby committed an offence punishable under section 4 of the POCSO Act?

## <u>6.</u> <u>Decisions and reasons thereof:</u>

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 on record.

7. PW-1 is Shri Premananda Hasnu who has deposed that he is the informant of this case and he knows the accused person. The victim is his daughter. The incident occurred on 29th November, 2015. On the day of occurrence at about 5:00 PM, his daughter went to the house of adjacent resident, Ranjit Bodosa as she was called by the daughter of Ranjit Bodosa. At that time, daughter of Ranjit Bodosa was alone at their house. His daughter and the daughter of Ranjit Bodosa were enjoying television together. After a while, his daughter came running to their house and with trembling and told his wife that amidst the watching TV, she went outside to attend the call of nature and at that time, the accused took his daughter by pulling to the backside of the house of Ranjit Bodosa and tried to rape her. While the accused through his penis touched the vagina of his daughter, she ran shouting to his house and narrated the happening before them. He and his wife immediately went to the place of occurrence, but the accused left the place. They noticed the accused standing at a considerable distance and while they tried to catch him, he managed to flee. Thereafter, he informed the matter to VDP and the VDP informed the matter to the police. In the night itself, police came to his house and brought his daughter for medical examination. On the next day of the

occurrence, he lodged the ejahar at Manja Police Station. Ext.1 is the ejahar and Ext.1(1) is his signature. On the same day, the son of the accused handed him (accused) over to police. At the time of occurrence, the age of the victim was seven years. Police brought his daughter to Diphu Civil Hospital for medical examination and got the statement of the victim recorded in the Court. Later on, the Court handed over the victim girl to him.

- 8. PW-2 is Shri Shiv Kumar Difusa who has stated in his evidence that he knows the informant, the victim and the accused person. The occurrence took place on 29.11.2015. On the next day of the occurrence, he was informed by his wife that the accused tried to rape the daughter of the informant and thereby his wife urged him to take stock of the occurrence at the house of the informant. Going to the house of the informant, he came to know that the accused tried to rape the daughter of the informant by pulling her to the backside of the house of Ranjit Bodosa. At the time of coming to the house of the informant, he found police there. He knew that the police took the victim to hospital for her medical examination. Police arrested the accused on the next day of the occurrence. At the time of occurrence, the victim was 8(eight) years old.
- 9. PW-3 is Shri Ratneswar Hasnu who has stated that he knows the informant, the victim and the accused person. The occurrence took place in the year 2015. On the date of occurrence during evening hours, he was at the marriage ceremony held at the house of the brother of the informant. At about 7:00 PM, the

informant and his wife came to the wedding house and told him that the accused raped their victim daughter and asked him to inform the matter to police as he was VDP secretary at that time. Then he went to the house of the informant and found the victim weeping. As she was weeping, he did not ask her anything. Thereafter, he along with 8/9 persons went to the house of the accused. As they did not find the accused at his house, he gave the phone number of police station to the informant and accordingly, the informant appraised the matter to Manja Police Station. On the next day of the occurrence, the son of the accused handed him (accused) to the police station. At the time of occurrence, the victim was 8(eight) years old.

- 10.PW-4 is Shri Birthu Jigdung who has stated that he knows the informant, the accused and the victim. The incident occurred in the year 2015. On the day of occurrence, he heard from the villagers that the accused forcibly raped the victim. He could learn that the accused took the victim by pulling to the backside of the house of Ranjit Bodosa and raped her there. Later, he came to know that the police arrested the accused person. At the time of occurrence, the victim was 8 (eight) years old.
- 11.PW-5 is Dr Mercy Rongpharpi who deposed that on 30.11.2015 while she was working at Diphu Civil Hospital as Medical & Health officer-I, he examined the victim in connection with Manja PS Case No.59/2015 and found no visible external injury on her body. She also found hymen intact and no

injury/bruise over the labia minor. X-ray was done for determination of age. The age of the girl was found in between 7 to 8 years. She also stated that as per physical examination, there was sign of attempted penetration. Ext.2 is the medical report and Ext.2(1) is her signature.

- 12.PW-6 is Shri Ranjit Bodosa who stated that he knows the informant, the victim and the accused person. The family of the victim lives near his house. The incident took place about three years back. On the day of occurrence, he went outside for doing some works. On his return home at about 7 PM, his daughter-Isha and victim informed him that while they were watching TV at his house, the accused brought the victim outside the house and raped her. At the time occurrence, except victim and his daughter, there was nobody in his house. At the time of occurrence the age of the victim and his daughter was about 6-7 years. Later, he came to know that the informant lodged the case at the police station. He did not meet the accused after the occurrence.
- 13.PW-7 is the victim of this case who has testified in her deposition that the incident took place about three years back at 5:00 PM. At the day of occurrence, she went to the house of Isha to watch TV. At the time watching TV, she went out for attending natural call. At that time, the accused caught hold of her and took her to the backside of the house. The accused removed his pant and he touched her private part (organ of urination) through his penis. Then she ran away to the house by pushing

the accused. She told the incident to her mother. The police brought her to Diphu Civil Hospital for medical examination and got her statement recorded in the Court.

- 14. PW-8 is Miss Esha Bodosa who told that she knows the victim, the accused and the informant. The incident occurred about three years back. At the time of occurrence, she and victim were watching TV and no one was present there except them in their house. It was about 6 PM when victim came out for attending natural call. After a while, when she heard the crying of the victim, she also came outside and saw the accused fleeing away and victim was moving towards her house by weeping. In fear, she also went to the house of the victim. Victim informed her that the accused had raped her. Thereafter, she and victim told the whole incident to the mother of the victim.
- 15.PW-9 is Shri Rabinsing Jahari who deposed that he does not know the informant, but met the accused in the police station. The occurrence took place in the year 2015. On the day of occurrence, he went to the place of occurrence along with the investigating police officer. The investigating police officer talked to the informant keeping him on the road. He did not know what their conversation was. He does not know except this much.
- 16.PW-10 is Shri Jitendra Nath Das who is the I.O. of this case. He stated that on 29.11.2015 while he was working as Second Officer at Manja Police Station at 5:30 PM, Shri Hemaram Medhi informed them that a

senior man raped a minor girl at Kheronigaon. On receipt of this information, the OC of their police station made GDE No.625 and directed him to investigate the case. As per direction of the OC, he went to the place of occurrence along with his staffs. He enquired of the matter from the persons who were available at the place of occurrence. Although he searched the accused, he did not find him. On the next day, i.e. 30.11.2015 the informant, Premananda Hasnu lodged an ejahar at the police station. Ext.1 is the ejahar and Ext.1(1) is his signature. On the day of lodging ejahar, the accused personally appeared in the police station and on interrogation, he confessed that he raped victim, daughter of the informant. Then he arrested him and forwarded him to the Court. On that day, he got the victim medically examined and got her statement recorded in the court. On that he again left for the place of occurrence and took three photographs of the place of occurrence. Ext.3, Ext.4 and Ext.5 are the photographs of the place of occurrence. He collected the statement of the victim recorded under section 164 of CrPC. and medical report of the victim. On completion of investigation, he found sufficient materials against the accused person and accordingly, submitted charge-sheet under section 376(f) of IPC and 4 of the POCSO Act. Ext.7 is the charge-sheet and Ext.7(1) is his signature.

17. Now let us see whether at the time of occurrence the victim was a child nor not. As per ejahar marked as Ext.1 victim was 8 years old. According to PW-1 who is father of the victim that at the time of occurrence the victim was 7 years old. According to PW-2 to PW-

4 at the time of occurrence the victim was 8 years old. PW-5 is the Medical Office who examined the victim on 30.11.2015 and according to her the victim was 7/8 years old. The defence has declined to cross examine the Medical Officer marked as PW-5 who has clearly deposed that on 30.11.2015 the victim found to be 7/8 years old. Considering all aspects I find no way to disbelieve the evidences as regards age of the victim girl on record. Hence I have come to conclusion that at the time of occurrence the victim was a child having age of 8 years.

18.In this case entire case lies on evidence of the victim and her friend marked as PW-8. Both victim and her friend marked as PW-8 have categorically stated that prior to the occurrence both of them were enjoying TV in the house of PW-8 and that at that time there was no any other member in the house. The victim has very naturally deposed before the court that while she came out from the house for attending natural call the accused coming from back side took her back side of the house and after removing her pant he made his penis connected with her private part. She has further stated that after pushing the accused she came to the house running and informed her mother about the occurrence. PW-8 supporting the evidence of the victim girl deposed that hearing crying of the victim she came out and saw the victim going towards her house crying and accused fleeing away. She further has stated the victim had told her that the accused raped her. Evidence of the Medical Officer who examined the victim shows that on examination hymen was found to be intact. Hence it can be said that there was no penetration. I find that the evidence of the victim girl has corroborated by the Medical evidence.

- 19.PW-1 is the father of the victim. His evidence shows that victim came house back crying and told him and his wife about the occurrence. His evidence also shows that Police got the statement of the victim recorded under section 164 of the CrPC. PW-10 is the Investigating Officer he has also stated that he got the statement of the victim recorded under section 164 of the CrPC in the court. I have also very carefully gone through the said statement wherein the victim has stated that the accused coming from back side hugged her and made his penis connected with her private part. Taking all aspects I find no way to disbelieve the evidence of victim girl.
- 20. 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."
- 21. The section 4 of the POCSO Act relates to Punishment for penetrative sexual assault 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."
- 22. The section 7 of the POCSO Act relates to Sexual assault which reads thus:- "7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."
- 23. The section 8 of the POCSO Act relates to punishment for sexual assault which reads thus:- "8. Punishment for sexual assault.- Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine."

#### **ORDER**

- **24.** In the result, I find the accused Shri Duta Sing Difusa guilty under section 8 of the POCSO Act and accordingly he is convicted.
- **25.** On the point of sentence, the accused person is heard and to that effect his statement is recorded.
- 26.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 earlier convicted by the Court of Law and as such the accused deserves to be punished leniently. On the other hand, learned Public Prosecutor has submitted that the accused needs to be punished exemplary failing which a negative message will go to the Society. Considering age of the accused person and nature of the offence, I am of the opinion that the accused deserves to be punished leniently. Accordingly I do hereby Order the accused Shri Duta Sing Difusa to suffer RI of 3 (Three) years and to pay fine of Rs. 1000/- i/d SI of 2 (Two) months. Let certified copies of Judgment and Order be supplied to the accused person at free of cost. Also send a copy of this Judgment to the District Magistrate, Diphu, Karbi Anglong in terms of 365 of the CrPC.
- 27.No order as regards recommendation of compensation under section 357 A of the CrPC is passed.
- **28.** Accordingly this case is disposed of on contest.

**29.** Given under hand and seal of this court today, the  $03^{rd}$  day of September, 2019 at Diphu, Karbi Anglong.

Dictated and corrected by me.

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

## **APPENDIX**

## **Prosecution Witnesses:**

PW1- Shri Premananda Hasnu

PW2- Shri Shiv Kumar Dev

PW3- Shri Ranteswar Hasnu

PW4- Shri Birthu Jigdung

PW5- Dr. Mercy Rongpharpi

PW6- Shri Ranjit Bodosa

PW7- Victim

PW8- Miss Esha Bodosa

PW9-Shri Rabin Sing Jahari

PW10-Shri Jitendra Nath Das

# **Defence Witnesses: Nil**

# **Prosecution Exhibited:**

Ext.1- Ejahar

Ext.2- Medical Report

Ext.3- GD Entry No. 625

Ext.4, Ext.5 and Ext.6-3 (Three) Nos. photos of PO

Ext.7- Charge Sheet

# **Defence Exhibited: Nil**

Diphu, Karbi Anglong, Assam.