# CAUSE TITLE POCSO Case No. 37/16

Informant: Sri Ram Bilash Singh,

S/o- Late Ram Pyaree Singh, R/o- No. 1 Dill Duwania Gaon,

PS- Namrup,

District- Dibrugarh.

Accused: Sri Dhaneswar Mahatoo,

S/o- Late Baluram Mahatoo, R/o- No. 1 Dill Duwania Gaon,

PS- Namrup,

District- Dibrugarh.

## ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Mr. Uttam Kumar Rough, learned Advocate.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 37/16 G.R. Case No. 264/16

> > State of Assam

-Vs-

Sri Dhaneswar Mahatoo

Charges: Under Section 8 of POCSO Act.

Date of evidence on : 19-07-16, 06-06-17, 05-07-17 and 14-12-17.

Date of argument : 09-04-18. Date of Judgment : 07-05-18.

#### **JUDGMENT**

- 1) A brief account of this case is that on 23-01-16, at about 2:00 pm, Sri Dhaneswar Mahatoo (hereinafter the accused) entered into the victim's house when the minor victim was alone at home and asked for a glass of water. When the victim went to fetch water, the accused held her hand and attempted to commit rape on her. An FIR regarding this incident was lodged by the victim's father Sri Ram Bilash Singh with the police at Namrup Police Station which was registered as Namrup PS Case No. 15/16 under Sections 376/511 of the Indian Penal Code (IPC in short), read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO Act in short).
- 2) The investigating officer (IO in short) embarked upon the investigation and went to the place of occurrence. He prepared the Sketch-Map and recorded the statements of the witnesses. He seized one School Certificate and on finding prima facie materials, he submitted Charge-Sheet against the accused under Sections 376/511 IPC, read with Section 8 of POCSO Act.
- 3) On appearance of the accused, copies were furnished. After hearing both the sides, a formal charge under Section 8 of POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.

- 4) To substantiate the stance, the prosecution adduced the evidence of eight witnesses including the IO. The accused cross-examined the witnesses to refute the charges.
- 5) I have heard the arguments forwarded by the learned counsel for both the sides.

### **POINTS FOR DETERMINATION:**

- 6) On the backdrop of the rival proponements, the following point is taken up for proper adjudication of this case:
  - i. Whether on 23-01-16, the accused committed sexual assault on the victim X?

#### **DECISION THEREON AND THE REASONS FOR THE DECISION:**

7) The victim X testified as PW-1 that the accused is her neighbour. The incident took place on 23-01-16 on Saturday. On that day, at about 2:00 pm, she was alone at home, as her mother died. Her father and her brother both went for work. At that time, the accused came to her house and asked for a glass of water. She then went inside and came out with a glass of water. The accused already entered into the room from the verandah. She offered him the glass of water and the accused held her by her wrist. She asked the accused as to why he was holding her hand and then the accused replied that he had something to discuss. Then she asked him to properly sit and discuss, but the accused did not let go off her hand and instead, he snatched her mobile phone and threw it on the ground and broke it. When she tried to wriggle out of his clasp, she fell on the ground and the accused caught hold of her sweater from behind while she was getting up. Then the sweeter came out, as it was a front open sweeter and was not buttoned up at that time. Then she ran out of her house to her paternal uncle's house, but no one was in her uncle's house. Then she went out of the house and met the accused person's son on the street and immediately, she informed the accused person's son. Then the accused person's son escorted her into her house. Meanwhile, the accused already left. Thereafter, the accused person's son left her and she remained at home alone till the evening. In the evening, before her father and brother returned, the accused once again came and apprised her that he was being playful and he requested her not to inform the incident to anybody. He also threatened her to cut her and kill her if she narrates the incident to anybody. Thereafter, the accused left and her father returned from

- work. She informed her father about the incident and then her father lodged an ejahar with the police. She was also forwarded to the Magistrate for recording her statement. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(3) are her signatures. She sustained minor injuries on her hand as the glass of water which she offered to the accused, fell on the ground when she tried to escape from the accused person's clasps.
- 8) In her cross-examination, she testified that her paternal uncle's house is near her house and at a little distance, there are some more houses. The police recorded her statement at the police station. She addressed the accused as 'Dodo'. She has denied the suggestion of the defence that she omitted to state before the Magistrate that when she offered the glass of water to the accused, he clasped her wrist and the glass of water fell on the ground. She also denied the suggestion by the defence regarding her omission to state before the police and the Magistrate that the accused clasped her sweater which was front open and unbuttoned. She also denied the suggestion that she omitted to state before the police that the accused snatched her mobile and threw it on the ground and broke the same and that the accused person's son accompanied her to her house and at that time, the accused already went away from her house. She also denied the suggestion by the defence that she omitted to state before the Magistrate that the accused came to her house and threatened her not to inform anybody else about the incident, lest he would kill her.
- 9) The evidence of PW-1 is supported by the evidence of her father Sri Ram Bilash Singh who testified as PW-2 that the accused is his neighbour. His daughter is about 16 years of age. The incident took place on 23-01-16. At that time, his daughter was alone at home and he went for his work. When he returned home at about 5:00 pm, his daughter informed him that the accused came to his house at about 2:00 pm and asked her for a glass of water. When she offered her a glass of water, the accused caught her and tried to molest her, but she managed to escape and ran away to her paternal aunt's house. On 26-01-16, he got the FIR written by the Gaonburah according to his narrative. He affixed his signature on the FIR and lodged the same with the Namrup Police Station. As he was ailing at that time, he could not lodge the ejahar earlier. Ext. 2 is the FIR and Ext. 2(1) is his signature. The police recorded his statement and seized the school certificate of his

- daughter which was again returned to him. Ext. 3 is the Seizure-List and Ext. 3(1) is his signature. Ext. 4 is the Zimmanama and Ext. 1(1) is his signature. His daughter was forwarded to the Court for recording her statement.
- 10) The FIR reflects that the complainant was not well and he could not lodge the FIR immediately after the incident. His evidence supports the evidence of his daughter. The evidence of PW-1 and PW-2 clearly depicts that on 23-01-16, at about 2:00 pm, when the victim was alone, the accused went into her house and asked for a glass of water. When the victim offered him the glass of water, the accused clasped her wrist and attempted to commit rape on her.
- 11) The evidence of PW-1 and PW-2 is supported by the evidence of Smt. Arati Magar who testified as PW-3 that the accused is from her village. The victim is the complainant's daughter. The incident took place in the month of July, in the previous year. On the next day of the incident, she heard from the villagers that there was a quarrel between the accused and the victim.
- 12) The evidence of PW-1, 2 and 3 is also supported by the evidence of Smti. Rina Singh who testified as PW-4 that the accused is her neighbour. The complainant is the victim's father. The incident took place about a year ago. On the evening of the incident, when she returned from work, she heard from the villagers that the accused committed rape on the victim.
- 13) The evidence of PW-1, 2, 3 and 4 is supported and corroborated by the evidence of PW-5 Sri Dipen Basumatari who testified that the accused is known to him. The incident took place about 1 ½ years ago. When he returned from his duty, his wife informed him that the victim was molested by the accused in her house. So the accused was arrested by the police.
- 14) It is pertinent to mention at this juncture that the evidence of PW-3 and 4 remained uncontradicted. However, the evidence of PW-3 remained hearsay, because he could not remember from whom he heard about the fight between the accused and the victim. Although PW-5 was cross-examined, his testimony remained uncontradicted and even after the cross-examination of the IO.
- 15) PW-6 Md. Naimuddin Saikh denied any knowledge about the incident.
- 16) The IO Sri Deepak Sutradhar testified as PW-7 that on 26-01-16, he was posted at Namrup Police Station as SI. On that day, the Officer-in-charge (OC

in short) received an FIR and registered the same as Namrup PS Case No. 15/16 under Sections 376/511 IPC, read with Section 8 POCSO Act and endorsed him with the investigation. Ext. 2 is the FIR and Ext. 2(2) is the signature of Sidananda Bora directing him to conduct the investigation. He met the informant and the victim in the police station and recorded their statements. He went to the place of occurrence and prepared the Sketch-Map and recorded the statements of other witnesses. Ext. 4 is the Sketch-Map and Ext. 4(1) is his signature. He seized one original school certificate of the victim vide Ext. 3 wherein Ext. 3(2) is his signature. He retained the xerox copy of the certificate and handed over the original certificate to the victim's family. Ext. 4 is the Zimmanama signed by the victim's father taking back the certificate. On 27-01-16, he arrested the accused and forwarded him to the jail. He forwarded the victim to the Court for recording her statement under Section 164 CrPC. He produced the victim before the CWC on 29-01-16. Meanwhile, he was transferred and he handed over the Case Diary to the OC.

- 17) SI Srimanta Kumar Bharali testified as PW-8 that on 14-03-16, he joined as SI at Namrup Police Station and the OC handed over him the Case Diary of this case. He went through the Case Diary and on finding prima facie materials, submitted Charge-Sheet against the accused. Ext. 6 is the Charge-Sheet and Ext. 6(1) is his signature.
- 18) It is pertinent to mention as this juncture that PW-7 testified in his cross-examination that PW-1 did not state before him that the accused clasped her sweater which was front open and unbuttoned and that the accused snatched her mobile and threw it on the ground and broke the same. It is true that there is an omission on the part of the victim, but this contradiction can be safely ignored as a minor contradiction. The statement of the victim under Section 164 CrPC is consistent and remained uncontradicted. The statement of the informant also remained uncontradicted. He was cross-examined extensively by the defence, but his evidence remained uncontradicted and uncontroverted. It has already been held that the evidence of PW-1 is corroborated by the evidence of PW-2 and supported by the evidence of PWs-3, 4 and 5.
- 19) In view of my foregoing discussions, it is thereby held that the prosecution could prove beyond reasonable doubt that the accused person is complicit. However, considering the act committed by the accused, the punishment is

scaled down to Section 12 of the POCSO Act. The accused is not held guilty of sexual assault on the victim, because there was no overt act of sexual assault by the accused on the victim. However, considering the fact that he clasped the victim's hand and did not let her go, the accused is held guilty of the offence under Section 11(i) of the POCSO Act for his gesture of clasping the victim by her wrist.

20) I have heard the accused on the point of sentence. He has prayed that he is unable to pay the fine and he is innocent.

#### **SENTENCE**:

- 21) The accused Sri Dhaneswar Mahatoo is convicted under Section 12 of the POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 1 ½ (One and half) years and to pay a fine of Rs. 200/- (Rupees Two Hundred) only and in default of payment of fine, to undergo RI for 1 (one) month. The period of detention of the accused during investigation and trial is set off with his custodial sentence.
- 22) Furnish free copies of judgment to the accused and to the District Magistrate.
- 23) Considering the facts of the case, I have not referred this case for compensation to the victim.

Judgment is signed, sealed and delivered in the open Court on the 7<sup>th</sup> day of May, 2018.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

> > Contd.

## **APPENDIX**

## List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Sri Rambilash Singh;
- 3. PW-3 Smt. Arati Magar;
- 4. PW-4 Smti. Rina Singh;
- 5. PW-5 Sri Dipen Basumatari;
- 6. PW-6 Md. Naimuddin Saikh;
- 7. PW-7 Sri Deepak Sutradhar; and
- 8. PW-8 SI Srimanta Kumar Bharali.

#### List of Exhibits:

- 1. Ext. 1 Statement of the victim X recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 4 Sketch-Map;
- 5. Ext. 5 Simma Nama; and
- 6. Ext. 6 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.