CAUSE TITLE POCSO Case No. 75/15

Informant: 'Y'.

Accused: Sri Ghonen Bhumij,

S/o- Late Joysingh Bhumij, R/o- Baghmora, Khanikar,

PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Sri Utpal Borah, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 75/15 G.R. Case No. 2783/15

> > State of Assam

-Vs-

Sri Ghonen Bhumij

Charges: Under Section 8 POCSO Act.

Date of evidence on: 08-08-16, 16-09-16, 08-11-16, 16-03-17, 29-11-17,

05-02-18

Date of argument: 05-02-19. Date of Judgment: 05-03-19.

JUDGMENT

1) The facts leading to this case is that on 30-09-15, at about 9:00 am, when the victim say-'X' (13 ½ years of age) was alone at home, Sri Ghonen Bhumij (hereinafter the accused) entered into her house and attempted to commit rape on her. When the victim screamed, her neighbours Smt. Manjula Tanti and Smt. Anu Patnayak came to her rescue and the accused fled. An ejahar regarding this incident was lodged by the victim's father 'Y' (hereinafter the informant). A GD Entry No. 66 dtd. 04-10-15 was registered and the ejahar was forwarded to the Tingkhong Police Station which was registered as Tingkhong PS Case No. 111/15 under Sections 448/376/511 of the Indian Penal Code (IPC for short) and ASI Kanteswar Moran was endorsed with the investigation and SI Bhaskar Jyoti Phukan was endorsed to complete the investigation. Both the police officers (IO in short) embarked upon the investigation. They went to the place of occurrence, recorded the statements of the witnesses and prepared the Sketch-Map. The victim was forwarded to

the Magistrate for recording her statement and to the doctor for medical examination. On finding prima facie materials, the IO submitted Charge Sheet against the accused under Sections 448/376/511 IPC, read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

2) To substantiate the stance, the prosecution adduced the evidence of ten witnesses, including the IO and exhibited several documents, whereas the defence cross-examined the witnesses to refute the charges. On the inculpatory circumstances arising against him, the answers of the accused to the questions under Section 313(1)(b) of the Code of Criminal Procedure (CrPC for short) depicts a plea of total denial.

Submissions:

3) The learned Public Prosecutor Smt. Runumi Devi and learned Addl. Public Prosecutor Mrs. Sahnaz Akhtar laid stress through their arguments that this case has been proved beyond a reasonable doubt and the accused deserves stringent punishment, considering the contumacious act. The learned defence counsel Sri Utpal Borah laid stress through his argument that a case has been surreptitiously foisted against the accused pursuant to political rivalry between both the parties. The major contradictions are apparent, because the victim herself contradicted her statement vis. a vis. her testimony. The victim is not a minor. It is also submitted that the evidence of all other witnesses is hearsay evidence.

Points for determination:

4) As charge was framed only under Section 8 POCSO Act, the point to be taken up for determination is: Whether the accused committed sexual assault on

the victim on 30-09-15, who took the advantage of the absence of her parents?

Decision thereon and the reasons for the decision:

- 5) To decide the case in its proper perspective, it is necessary to delve into the evidence.
- 6) The victim 'X' testified as PW-2 that the accused person is her neighbour. The incident occurred on 30-09-15, at about 9:00 am. At that time, she was having her food inside her house and her parents went out for work. The accused then entered into her house and embraced her from behind and groped her breasts. Then she screamed and Tanu Patnayak and Manjula Tanti came to her rescue and the accused fled. She narrated the incident to Manjula and Tanu. In the evening, at about 4:00 pm, when her parents returned home, she informed them about the incident. On the next day, the villagers arranged a meeting and she informed the villagers about the incident in the meeting. The accused was not present in the meeting. Thereafter, her father lodged the FIR with the police at Rajgarh Outpost. The police recorded her statement and forwarded her to the Court and the Magistrate recorded her statement. Ext. 2 is her statement and Ext. 2(1) and Ext. 2(2) are her signatures. The police took her to the Assam Medical College & Hospital at Dibrugarh for medical examination, but she refused medical examination.
- 7) In her cross-examination, she testified that she is a student of Class-VIII and her date of birth is 02-02-2000. She testified that Munin Baruah, Chandan, Guni, Gojen, Binud, Budhan, Bivisan and a person named Gupta are her neighbours who resides with their respective families. There is a path (gobat) in front of their house which is used by the local people. The accused wanted

to increase the breadth of the path, but the villagers including her father restrained him from widening the path. She further testified in her cross-examination that she stated before the police that she went to the school on 30-09-15 and she indeed went to the school at that time.

- 8) It is pertinent to mention at this juncture that this witness was cross-examined in extenso, but no contradiction could be elicited through her cross-examination, except that she did not state under Section 164 CrPC that when her parents returned home, she informed them about the incident. Apart from this, no contradiction could be elicited. The testimony of the witnesses is consistent to her statement under Section 164 CrPC as well as to her testimony under Section 161 CrPC. The IO ASI Kanteswar Moran has affirmed through his cross-examination as PW-10 that the victim did not state under Section 161 CrPC that she informed about the incident to her parents.
- 9) The victim may not have stated that she informed about the incident to her parents, but it is apparent from the evidence that the accused is complicit. She was not cross-examined by the learned defence counsel regarding any failure to state that the accused committed sexual assault on her by groping her breasts. It is clear from the evidence that when she was alone at home and was preparing to go to school, the accused entered into her house and groped her breasts from behind.
- 10) This evidence of PW-2 is corroborated and supported by the evidence of Smt. Manjula Tanti who testified as PW-6 that the accused is her neighbour, while the informant is her brother-in-law (borjona). The incident took place about 3/4 months ago (from 16-03-17). Before leaving for school, the victim was alone at home and she was shouting "Khurideo......Khurideo" and so she went to the victim's house which is adjacent to her house. As soon as she reached

the victim's house, she saw the accused person leaving her house. After reaching her house, she asked the victim as to what had happened and the victim informed her that the accused tried to embrace her in an immodest way. The victim was crying. On the earlier occasions also, the accused used to display indecent gestures to the victim whenever he met her alone or whenever she was alone at home. The victim's parents arrived and a meeting was called and it was decided in the meeting to lodge a case against the accused.

- 11) This witness was cross-examined regarding her omission to state before the IO that at the time of leaving for school, the victim was alone and she screamed "Khurideo...... Khurideo" and that she did not state under Section 161 CrPC that on earlier occasions also, the accused used to display indecent gestures to the victim when she was alone at home. This omission has been affirmed by the IO who testified as PW-10.
- 12) It is true that PW-6 did not state under Section 161 CrPC that at the time of leaving for school, the victim shouted and that the victim stated before him that the accused used to display indecent gestures. At the same time, it is also true that this witness, PW-6 was not cross-examined regarding any further omission. Thus, it is implicit that this witness indeed mentioned about the accused person's complicity. Her evidence that the accused committed sexual assaulted on the victim, remained uncontradicted ad uncontroverted. Nuance of this nature has to be detected inevitably. It is true that an innocent person should not be incarcerated, but at the same time, the guilty should not be go scot free.

- 13) The evidence of PW-7 lends corroboration to the evidence of PWs-2 and 6. Smt. Tanu Patnaik testified as PW-7 that the accused, complainant and the victim are her neighbours. The alleged incident took place about a year ago. It was at about 9:00 am and she was at home when she heard the victim screaming from her house and she immediately went there and reached her house and saw the accused coming out of her house. She asked the victim as to what had happened and the victim informed her that the accused tried to embrace her. A case regarding this incident was lodged with the police and her statement was recorded.
- 14) In her cross-examination, PW-7 denied that she had given false evidence as tutored by Debaru. She denied of her omission to state before the IO that at the time of the alleged incident, she heard the victim screaming and when she went to her house, she saw the accused coming out from her house and the victim informed her that the accused tried to embrace her.
- 15) I have carefully scrutinized the evidence of the IO. The IO was not questioned regarding such omission. This implies that PW-7 indeed mentioned before the IO that when she came out on hearing the victim's cries, she saw the accused person coming out of the victim's house and the victim informed her that the accused tried to embrace her.
- 16) In view of my foregoing discussions, it is thereby held that there is clinching evidence. PW-2"s evidence is supported and corroborated by the evidence of PWs-6 and 7 who immediately went to her house after she screamed. The accused had no business to go to the victim's house and embrace her and grope her breasts when she was alone at home. The evidence of PWs-6 and 7 is supported and corroborated by the evidence of PW-1 Sri Debaru Orang

who testified that he is the president of the VDP of Nilmoni Khanikar Gaon under Rajgarh Outpost. On 30-09-15, the informant 'Y' went to his house and informed him that the accused tried to commit rape on his daughter at his residence. Then he called for a meeting in his village and the villagers advised the informant 'Y' to lodge the FIR. Accordingly, 'Y' lodged the FIR which was written by him according to 'Y's narrative and 'Y' affixed his signature on the FIR. Ext. 1 is the FIR and Ext. 1(1) is his signature as the scribe of the FIR. He met the victim in the meeting which was held in their village, after the incident, where 'X' informed him that the accused attempted to commit rape on her while she was alone at home.

- 17) In his cross-examination, PW-1 admitted that he is a member of AGP and he is the president of Tingkhong Tea Cell of AGP, while the accused is a member of INC.
- 18) At this juncture, it is pertinent to mention that the reason regarding the animosity and political rivalry between PW-1 and the accused person, does not appear plausible enough that a case of such a serious nature will be foisted by holding the victim as bait by her own father. Both the PW-1 and the accused person are members of rival political factions, but they are not contesting candidates for any post to go to an extent of mud-slinging with such serious allegations. It is true that PW-1 admitted that the FIR was lodged after four days, but this does not mean that the FIR has been scripted and fabricated. Immediately after the incident, the victim's father went to the VDP president and the VDP president called for a meeting. After the meeting, it was decided to bring the accused to book. The theory of political rivalry is

found to be too farfetched and sketchy. It is also held that the evidence of PW-1 remained uncontradicted and uncontroverted.

- 19) The evidence of PWs-1, 2, 6 and 7 is supported by the evidence of the informant 'Y' who testified as PW-4 that the accused resides in their village and the victim 'X' is his daughter who is 14 (fourteen) years of age. The incident occurred about a year ago. On the day of the incident, he and his wife went out for daily work, while their daughter 'X' was alone at home. When he returned home in the evening, at about 4:00 pm, he learnt from his wife and Manjula Tanti that the accused tried to commit rape on his daughter 'X' while she was alone at home. When he asked his daughter about the incident, she informed him that while she was alone at home, the accused tried to commit rape on her. On the next day, he arranged a meeting in their locality, but the accused was absent. The members of the VDP could not take any decision and they advised him to inform the Rajgarh Outpost. The FIR was written by Debaru Orang, the president of the VDP and after reading the contents of the FIR, he affixed his signature and lodged the same with Rajgarh Outpost. Ext. 1 is the FIR and Ext. 1(2) is his signature. His daughter 'X' accompanied him along with his wife 'Z' to the said outpost and the police recorded their statements. He also submitted his daughter"s school certificate as age proof document.
- 20) This witness was also cross-examined in extenso, but the defence failed to elicit any contradiction through his extensive cross-examination.
- 21) I have carefully scrutinized the evidence of the IO and it is clear from the cross-examination that no contradiction could be elicited through the cross-examination of PW-4 as well as the cross-examination of the IO. This witness

was cross-examined extensively regarding the delay in the lodgment of the FIR. But the delay has already been explained by PW-1 as well as PW-4. One day was wasted in the meeting which was arranged by the VDP president after he was informed. This is how two days went past and on the third day, the FIR was lodged. The evidence of PWs-1, 2, 4, 6 and 7 is also supported and corroborated by the evidence of 'Z' who testified as PW-3 that the accused person is their neighbour and the victim is her daughter. On 30-09-15, the incident occurred. On that day, at about 1:00 pm, when she returned to her house, her daughter tearfully informed her that the accused entered into their house while she was taking meal before proceeding to her school at about 9:00 am. At that time, her daughter screamed and hearing her cries, Manjula Tanti (PW-6) and Tanu Patnayak (PW-7) came to their house and Manjula saw the accused person leaving their house. When her husband returned home from work in the evening, she informed him about the incident and he informed the villagers about the incident. On the next day, a meeting was held, but the accused was not present. The villagers advised her husband to inform the police and her husband lodged the ejahar against the accused person.

22) This witness was cross-examined in extenso. She was extensively cross-examined regarding the date of occurrence. She admitted that Debaru Orang told her about the date of occurrence. She also admitted in her cross-examination that she omitted to state before the police that a meeting was called by her husband by gathering the villagers and she did not know who presided over the meeting. However, these omissions do not cause a dent in the evidence. She may not know the exact date of the incident and may have been informed by Debaru Orang about the date of the incident, but this does

not thwart the evidence. These are minor contradictions which can be safely brushed aside.

- 23) I have already elaborately discussed in my foregoing discussions that the political rivalry also does not impel us to believe that a case will be foisted against the accused using the minor victim as bait. It is held that the evidence of the witnesses clearly depicts that the victim was having meal and as she was about to go to school, the accused stealthily entered into her house and attempted to assault her sexually. He held her in an inappropriate manner and embraced her. The victim is around the age of puberty and it was not proper for the accused to enter her house when she was alone and grope her breasts or embrace her. The act of the accused forms a part of the same transaction as envisaged under Section 6 of the Evidence Act, which is admissible as a part of 'res gestae'.
- 24) The evidence of PWs-1, 2, 3, 4, 5, 6 and 7 is also supported and corroborated by the evidence of PWs-8 and 9. Smt. Asha Tanti testified as PW-8 that the accused, the victim and her parents are known to her. The incident occurred about a year ago. After returning from work in the evening, she heard from the neighbours that an incident took place.
- 25) Although this witness denied any knowledge of the incident, it is clear from her testimony that an incident occurred about a year ago, i.e., at the time described by the informant, the victim, the VDP president and the mother of the victim as the date of the occurrence. The evidence of PW-9 also corroborates and the evidence of the other witnesses, because Smt. Bharati Patnayak testified as PW-9 that the accused person and the victim are known

to her. She heard from the victim's mother that the accused touched the victim and then the informant lodged this case.

- 26) The IO ASI Kanteswar Moran testified as PW-11 that on 04-10-15, he was posted at Rajgarh Outpost as ASI. On that day, the In-Charge received an FIR from 'Y' and registered GD Entry No. 66 dtd. 04-10-15 and forwarded the same to the Tingkhong Police Station and entrusted him with preliminary investigation. Ext. 1 is the FIR and Ext. 1(3) is the signature of Bhaskar Jyoti Phukan. The OC registered Tingkhong PS Case No. 111/15 with a direction to continue the case. He met the informant and recorded his statement. On the next day, the victim along with her mother appeared in the outpost and he recorded their statement in the outpost. He sent the victim to the Assam Medical College & Hospital at Dibrugarh for medical examination. He went to the place of occurrence, prepared the Sketch-Map and recorded the statements of the witnesses. Ext. 3 is the Sketch-Map and Ext. 3(1) is his signature. He forwarded the victim to the Court for recording her statement under Section 164 CrPC. he collected the Medico-legal Report Ext. 4. He tried to apprehend the accused, but could not arrest him and he was shown as absconder in the charge sheet. After completion of investigation, he handed over the Case Diary to the In-Charge and after perusal of the same, Charge-Sheet was laid by the In-Charge of the outpost. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature.
- 27) This witness was cross-examined in extenso.
- 28) It has already been held in my foregoing discussions that the evidence of the victim, PWs-6 and 7 and the evidence of the other witnesses remained uncontradicted and uncontroverted. The theory of political rivalry between two rival faction appears to be farfetched and sketchy. However, no overt act

of attempt to commit rape could be attributed to the accused. The victim herself did not testify that the accused attempted to commit rape on her. Her evidence depicts that the accused groped her breasts. The accused was charged under Section 8 POCSO Act and he is held guilty of the offence under Section 8 POCSO Act.

- 29) The date and time given by the witnesses are found to be reliable. The victim is a school student and she will indeed remember the date and time when she was sexually assaulted by an elderly person. The other witnesses, for example, PWs-4, 5, 6, 7 and 8 have given an approximate date and time. They testified that the incident took place about a year ago or a few months ago.
- 30) I have carefully scrutinized the date given by PWs-1, 2, 3 and 10, which clearly depicts that the incident occurred around the time given by the other witnesses. PWs-1, 2, 3 and 10 have given the accurate date and time of the incident. I would like to rely on the decision of Hon"ble Gauhati High Court in *Arun Tanti vs. State of Assam* 2018 (4) GLT 1002, wherein it has been observed that:-
 - 20. The accused being a matured man has indulged himself in such affairs knowing fully well that the victim is a minor one which clearly established that the accused/appellant has culpable mental state to have sexual intercourse with a minor girl, which has rendered him liable for the offence u/s 4 of the POCSO Act. The Ld. Trial Court has properly appreciated all the matters on record and has taken note of non compliance of provision of POCSO Act

mentioned above and also the legal pronouncement that the child witness is a competent witness to depose before the Court and conviction can be rest upon such evidence of child witness if found reliable, as has been held in Dattu Ramarao Sakhre Vs. State of Maharastra (1997) 5 SCC 341, Ratansingh D. Nayak Vs. State of Gujarat (2004) 1 SCC 64.

- 31) Reverting back to this case, it is thereby held that the testimony of the victim is found to be reliable. In a case under POCSO Act, the evidence of a child witness is bolstered by the provision of presumption. The accused is found guilty of offence under Section 8 POCSO Act. There is unblemished and clinching evidence against the accused.
- 32) I have heard the accused on the point of sentence. He has prayed for leniency, as he claims to be innocent.
- 33) I have considered the submission of the accused and an interaction with him convinces me that there is room for reformation. Suffice it to mention that a few years of confinement will meet the interest of justice.

SENTENCE:

34) The accused Sri Ghonen Bhumij is convicted under Section 8 of the POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 3 (three) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) 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. The fine realized, will be deposited in the cost fund of the District Legal Services Authority, Dibrugarh.

35) This case is recommended for victim's compensation under the Assam Victims Compensation Scheme, 2012.

36) Send a copy of this judgment and order to the Secretary of District Legal Services Authority, Dibrugarh for assessment of the victim's compensation.

37) Furnish free copies of judgment to the accused and to the District Magistrate.

Judgment is signed, sealed and delivered in the open Court on the 5th day of March, 2019.

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 POCSO Case No. 75/15

List of witnesses for prosecution:

- 1. PW-1 Sri Debaru Orang;
- 2. PW-2 The victim 'X';
- 3. PW-3 'Z';
- 4. PW-4 'Y';
- 5. PW-5 Sri Bhuban Khanikar;
- 6. PW-6 Smt. Manjula Tanti;
- 7. PW-7 Smt. Tanu Patnaik;
- 8. PW-8 Smt. Asha Tanti;
- 9. PW-9 Smt. Bharati Patnayak; and
- 10. PW-10 ASI Kanteswar Moran.

List of exhibits for prosecution:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Sketch-Map;
- 4. Ext. 4 Medico-legal Report; and
- 5. Ext. 5 Charge-Sheet.

List of material exhibits for prosecution: Nil. List of witnesses for defence: Nil. List of exhibits for defence: Nil.

Sessions Judge, Dibrugarh

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