

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(JN) 2016.

U/s_376(2) (i) of IPC R/W Sec. 4 of POCSO Act.

(G.R. Case No.51/2016 ;Simen Chapari P.S. Case No.09/2016 Under Section 376(2) (i) of the Indian Penal Code R/W Sec. 4 of POCSO Act.)\

The State of Assam

- Versus -

Shri Pradip PeguAccused Person

S/O Late Numal Pegu,
R/O Somkong Pagro Gaon,
P.S. Simen Chapari,
Dist.- Dhemaji,

Appearance:

Shri A. Fogla,	
Public ProsecutorFor the State
Shri. G. Phukan and	
Pranjal NegoFor the Accused

Date of prosecution evidence	: 16-05-2016, 26-09-2016, 07-12-2016, 20-03-2017, 18-04-2017 & 12-01-2018.
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Date of argument : **28-08-2018**
 Date of Judgment : **10-09-2018.**

JUDGMENT

Brief Facts:

1. Prosecution case in brief is that on 21-02-2016 complainant- Sri Bhaktaram Mili lodged an ejahar with Simen chapor Police Station alleging interalia that on 21-02-2016 at about 3 PM in the afternoon while he was away from his house, accused Pradip Pegu entered in to his house and forcibly committed rape on his minor daughter Miss 'X' (real name withheld).
2. On receipt of the ejahar police registered a case vide Simen Chapor P.S. Case No.9/2016 u/s 376(2)(i) of I.P.C., R/W section 4 of POCSO Act. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Pradip Pegu u/s 376(2)(i)/511 of I.P.C., R/W section 4 of POCSO Act.
3. The case came up before the learned SDJM, Jonai and the Ld. Magistrate issued process for appearance of the accused and on appearance furnished necessary copies to the accused and committed the case to this Court.
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 376(2)(i) of IPC read with Section 4 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 eight witnesses. After closure of the prosecution evidence the statement of the accused was

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recorded u/s 313 Cr.PC. Defence plea is of total denial. Defence declined to adduce any evidence.

5. Points for determination :

(1) That you, on 21-02-2016 at about 3 PM at village Loklung under Simen Chapor Police Station, inside the house of Bhaktaram Mili committed rape on his minor daughter – Miss 'X' aged about 13 years, and thereby committed an offence punishable u/s 376(2)(i) of I.P.C.

(2) That you, on the same day at same time and place, committed penetrative sexual assault on Miss 'X' a minor girl aged about 13 years, and thereby committed an offence punishable u/s 4 of POCSO Act.

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

Discussion, Decision and Reasons thereof :

7. **PW1** Shri Bhaktaram Mili identified the accused in the dock. He deposed that victim Miss 'X' is his daughter and the occurrence took place in the month of February. Accused committed rape on Miss 'X' inside their house. On the date of occurrence at the relevant time he went to market and victim was alone at home. On returning from market he came to know that accused had committed rape on his daughter. He filed the ejahar at the Police Station. He put his thumb impression in the ejahar. Police recorded his statement. Victim was medically examined.

In cross-examination PW1 stated that at the time of occurrence victim was 13 years old. He had not seen the occurrence. Victim herself told about the occurrence to him. He denied the defence suggestion that he has given false evidence that accused committed rape on his daughter. During investigation police seized the school certificate of the victim.

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8. **PW2** Shri Bhaigeswar Daw identified the accused in the dock and deposed that complainant-Bhaktaram Mili is his brother-in-law and victim Miss 'X' is the Bhaktaram Mili's daughter. According to him occurrence took place about 7/8 months back. On the day of occurrence there was a party/feast in his house and accused attended the party. He stated that the victim came to his house crying and stated that accused had committed rape on her. The boys of their village apprehended the accused and took to their house. Victim 'X' told that the boy who committed rape on her was identified as the accused Pradip Pegu. Knowing about the occurrence, father of victim filed the ejahar at the Police Station. Police came and took his statement.

In cross-examination PW2 stated that he had not seen the occurrence. Victim had told him about the occurrence. He denied that victim did not tell him the occurrence. He denied that the relation between the accused and his brother-in-law was not good. He also denied that he has given false evidence against the accused in favour of his brother-in-law. It is also denied that the accused did not commit any offence.

9. **PW3** is the victim. She identified the accused in the dock and deposed that occurrence took place about 6 months back. On the date of occurrence she was alone at her home as other family members had gone to attend a party. At the relevant time accused came to her house and grabbed her from behind and dragged her inside the house and removed her clothes and laid her on the bed and kissed her. She also stated that accused had sex with her. She somehow escaped and went to the party/feast. The accused also tried to escape but the village boys apprehended him. Her father had gone to market and on his return she told her father about the incident and her father lodged compliant at Simen Chapor police station. Police got her medically examined and also produced before Magistrate for recording her

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statement. She also stated that at the relevant time she was reading in class VI.

In cross PW3 stated that the accused does not live near their house. The accused had come to attend the party. She does not know if accused had consumed liquor (Apong) at the party. Apong was served in the party. It is denied that she has lied about the accused removing her clothes and about kissing and raping her. She denied that she has not told the police about the accused removing her clothes. She also denied that the accused and her father had a fight earlier and they did not maintain a good relationship with accused. It is denied that the accused had not come to their house.

10. **PW4** Smti Jugeswari Mili stated that she knows the accused. Victim Miss 'X' is her daughter. Occurrence took place about 6 months ago at about 3 PM. At the time of occurrence victim was alone in his house. Her father had gone to the market. There was a party in a nearby house. She came to know from the victim that a person came and raped her, but she did not know the person. Then she raised hue and cry and people caught the accused. At the police station she identified the accused.

In cross-examination PW4 stated that accused-Pradip Pegu lived at a distance from their house. He is related to them. The wife of Pradip Pegu (accused), is the sister of her husband. The accused had come to the party. She does not know whether accused had consumed 'Apong' at the party. She had not seen the rape. She denied that the victim did not tell her about the accused committing rape on her. The victim told her that the accused had removed her clothes. She denied that she did not tell the police that she had told her about the accused removed her clothes. She does not know how many people were there but it must have been about 200 to 300. They do

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not have a bad relation with the accused. They do visit the house of the accused. It is denied that due to grudge they have filed a false case against the accused. She denied that she has given false evidence in the Court.

11. **PW5** Dr. Moni Deb stated that on 21-02-2016 he examined the victim Miss 'X' at Beginodi PHC in connection with Simen Chapor GD Entry No.356 dated 21-02-2016 on being escorted by Rinku Gogoi. On examination he found as follows-

On physical examination- Mark of violence was detected over dorsum of left hand and on examination of the private part- no any injury found over the private part. Hymen was found intact.

X-Ray was advised but the same has not been communicated.

In his opinion PW5 opined that the victim was not exposed to intercourse, her actual age could not be ascertained as no X-Ray report was communicated. According to the attendant she was 13 years old. Exhibit-1 is the injury-report and Ext-1(1) is his signature therein.

Defence declined to cross-examine the Doctor (PW5).

12. **PW6** Shri Sashi Daw stated that he knows the accused as well as the victim Miss 'X'. Occurrence took place about 7 months back at about 3 PM. He was in the house of Lawka Daw. They were at a party and enjoying. Accused had come and had also taken part in the celebration, but the accused left early. Then after sometime the girl came crying and told that accused had caught her and raped her. Then they caught the accused and gave him beating and took him to the police station.

In cross-examination PW6 denied that the girl (victim) did not come and tell them about the fact that the accused-Pradip Pegu had caught

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her and raped her. He did not ask the victim anything. He denied the defence suggestion that he did not tell the police as he has evidenced in the Court.

13. **PW7** Shri Basudeb Chingpho stated that on 21-02-2016 he was O/C at Simen Chapori police station. On that day one Bhakta Bahadur Mili lodged an F.I.R. and he registered the same as Simen Chapori P.S. Case No.9/2016 u/s 376(2)(i) IPC R/W section 4 of POCSO Act and he took charge of the investigation. Thereafter he went to the PO and drew the sketch map. He also took the statement of the witnesses. He sent the victim Miss 'X' for medical examination and later collected the report. Statement of the victim got recorded u/s 164 Cr.PC and he collected the same. He also seized the original birth certificate of the victim 'X'. He arrested the accused and forwarded him to the court. Thereafter, finding evidence against the accused, he filed the charge sheet against all the accused persons u/s 376(2)(i) IPC R/W section 4 of POCSO Act. Ext.2 is the sketch map and Ext.2(1) is his signature. Ext.4 is the seizure list and Ext.4(1) is his signature. Ext.3 is the charge sheet and Ext.3(1) is his signature.

In cross-examination PW7 stated that he had collected the school certificate. He denied that he has not properly investigated the case.

14. **PW8** Smti Archana Konch Dutta stated that on 23-02-2016 she was the Bench Asstt. of Judicial Magistrate 1st class, Jonai, Surajit Boruah. On that day JMFC, Surajit Boruah recorded the statement of Miss 'X' u/s 164 Cr.PC. Ext.5 is the statement recorded by JMFC, Surajit Boruah and Ext.5(1) is his signature which is known to her. The victim put her thumb impression in the statement and she took the RTI of the victim.

In cross-examination PW8 stated that the victim stated that she was illiterate and cannot write.

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Appreciation of evidence :

15. From the discussion of the evidence on record it appears that prosecution relies upon the evidence of victim and other non-official witnesses. Prosecution examined five non-official witnesses including the victim. PW1 is victim's father as well as the complainant. According to complainant at the time of occurrence he was away from home and on returning home he came to know about the occurrence. Victim has been examined as PW3. In her deposition she stated that on the date of occurrence she was alone at home, accused came and dragged her inside her house and removed her clothes and Kissed her and committed rape on her. Other witnesses PW2, PW4 and PW6 stated that on the date of occurrence there was a feast/party in the house of PW2. These witnesses also stated that the accused came to the party. Further they stated that they saw victim coming crying to the party and on being asked told them that accused committed rape on her.

16. The victim in her statement u/s 164 Cr.PC also stated that there was a party near her house and she was alone at home and the accused came and grabbed her and removed her under garments and laid her on a bed and kissed her and had sex with her.

17. Looking at the medical evidence we find that the MO- PW5, on examination of the victim did not find any mark of injury in her private part and the hymen was found intact and in the opinion of the doctor the victim was not exposed to any sexual intercourse. However, the MO on physical examination found mark of violence over dorsum of left hand.

18. I have carefully considered the entire evidence on record. It is seen that the victim is aged about 13 years of age. From the statement of the victim during trial and her statement u/s 164 Cr.PC it transpires that on the date of occurrence the accused came to her house while she was alone in her

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house. It is also in the evidence of PW3 and other non-official witnesses that there was a party near her house and the accused came to the party.

19. In the instant case on careful examination of the medical evidence we find that there is nothing on record to show that sexual intercourse or penetrative assault was committed on the victim.

20. However, the evidence of the victim that the accused caught hold of her and removed her clothes and kissed her found to be reliable in the facts and circumstances of the case. In my considered opinion though we do not find solid evidence in regard to penetrative assault or sexual intercourse, there is ample evidence to make out a case of outraging the modesty of a woman.

21. The defence case was of total denial as revealed from the cross-examination and the statement of accused u/s 313 Cr.PC. In cross examination defence attempted to show that the accused and the father of the victim did not maintain good relation for which false case has been filed.

22. I have given my anxious thought to the entire materials and I find that the plea of the defence is not acceptable in the facts and circumstances of the case.

23. From the above discussion and appreciation of evidence it is found that no case u/s 376(2)(i) IPC and R/W section 4 of POCSO Act is made out in this case. However, we find that there is enough evidence to hold that the accused committed an offence u/s 354 IPC.

Sec 354 IPC reads : Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either

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description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].

The essential ingredients of the offence under sec.354 IPC are as under:

- (i) That the person assaulted must be a woman;
- (ii) That the accused must have used criminal force on her; and
- (iii) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

24. The Hon'ble Supreme Court in the case of ***Tarkeshwar Sahu v State of Bihar (2006)8 SCC*** held as under: 'The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.'

25. In view of what has been discussed above I find that prosecution has been able to prove an offence u/s 354 IPC beyond all reasonable doubt. I find that prosecution has failed to prove the charge u/s 376(2)(i) IPC R/W section 4 of POCSO Act beyond reasonable doubt.

26. Though there is no specific charge in my considered opinion accused can be convicted by invoking sec 222 of Cr.PC.

ORDER:

27. I find the accused Pradip Pegu guilty u/s 354 IPC. Accordingly he is convicted thereunder. I find the accused not guilty u/s 376(2)(i) IPC R/W section 4 of POCSO Act and he is acquitted of the said charges.

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28. The accused pleaded for mercy on the ground that he has his wife and children and in his absence they will suffer.
29. Considering all aspect the accused is sentenced to S.I. for 1 (one) year and to pay a fine of Rs.500/-(five hundred) i.d. S.I. for (1) one month u/s 354 IPC.
30. Set off the period of detention.
31. Judgment is pronounced in open Court.
32. Bail bond extended up to 6 months u/s 437 A IPC.
33. A copy of judgment free of cost be given to the accused persons.
34. Given under my hand and seal of this Court on this the **10th** day of Sept/2018.

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APPENDIX :**Prosecution Witnesses**

PW1 : Bhaktaram Mili,
 PW2 : Bhaigeswar Daw,
 PW3 : Miss 'X' (victim),
 PW4 : Smti Jogeswari Mili,
 PW5 : Dr. Muni Dev,
 PW6 : Sashil Daw,
 PW7 : Bisadu SIingphu, IO,
 PW8 : Smti Archana Konch Dutta.

Prosecution Exhibits :

Exhibit-1 : Medical Report.
 Exhibit-1(1) : Signature of Moni Dev,
 Exhibit-2 : Sketch map,
 Exhibit-2(1) : Signature of Bisadu Singphu, IO
 Exhibit-3 : Charge Sheet.
 Exhibit-3(1) : Signature of Bisadu Singphu, IO
 Exhibit-4 : Seizure list,
 Exhibit-4(1) : Signature of Bisadu Singphu, IO
 Exhibit-5 : Statement of victim 'X' u/s 164 Cr.PC,
 Exhibit-5(1) : Signature of JMFC, Surajit Boruah

Defence Exhibits ;

None.

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