



IN THE COURT OF SPECIAL JUDGE ::::::::::::::: BAKSA AT MUSHALPUR

Present : Shri C. Das, AJS.

Judge, Special Court,
Baksa, Moshalpur

JUDGMENT IN SPECIAL POCSO CASE NO.25/18

U/S 376/ 417 IPC., R/W Section 4 of POCSO Act.

STATE

versus-

Sri Bichitra Bijay Das

.... Accused

Appearance :

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. D. Das, Sr. Advocate, Mr. G.D. Choudhury, U. Barman,
Ms, T. Kalita, Advocates

Date of evidence : 20/8/16, 30/8/16, 9/9/16, 20/9/16, 30/9/16, 3/12/16

19/1/17, 22/8/17, 21/9/17

Date of argument : 20/8/18, 4/9/18

Date of judgment : 4/9/18

JUDGMENT

1. The case of the prosecution briefly, is that on 24/1/15, the prosecutrix/ victim girl lodged the FIR before Officer-in-charge of Salbari police station, alleging inter-alia that the accused has committed sexual intercourse repeatedly with her for long period by inducing her with promise of marriage. But subsequently, with the conspiracy of others, the accused cheated her by marrying another girl secretly.

2. The police accordingly, registered the Salbari PS. Case No.05/15 on the basis of Ananda-Bazar OP GDE No.369, dated 24/1/15 and started its investigation. During the investigation, the I/O visited the place of occurrence,

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recorded the statement of witnesses and sent the prosecutrix for medical examination and recording her statement u/s 164 of Code of Criminal Procedure (in short; the CrPC). At the end of the investigation, the I/O having found prima-facie case well established, filed the charge-sheet against the accused to face trial in the court.

3. Accordingly, when the accused turned up in the court in response to issue of process against him. He was furnished with the relevant copy of the case immediately. After hearing the both sides and on perusal of material on record, the charge u/s 376/417 IPC., r/w section 4 of POCSO Act was framed against the accused. The charge so framed, was read over and explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution in the course of trial, examined as many as, 12(twelve) witnesses including the I/O and M/O to support its case. The accused in his statement recorded u/s 313 CrPC., denied all accusations, appeared against him in the evidence. But the accused declined to adduce any evidence in his defence. The argument of the parties was heard at length.

5. **POINTS FOR DETERMINATION :**

- i] Whether on or about 6/ 7 years back, at village- Sonaphuli under Salbari police station, committed rape on the victim / prosecutrix, a minor girl ;
- ii] Whether on the same date and place as above, the accused with the promise of marriage, cheated the victim/ prosecutrix and committed rape on her ;
- iii] Whether on the same date and place as above, the accused committed penetrative sexual assault on the victim/ prosecutrix ;

DECISION AND REASON THEREFORE :

6. At the outset of the argument of the case, learned Public Prosecutor submitted that the prosecution altogether examined 12 witnesses to bring home the charge against the accused and from their evidence, it is crystal clear that the accused under the pretext of false marriage, committed rape on the victim girl who was a minor girl at the time of the occurrence. He submitted that since the victim girl was a minor, her consent is not material for the case inasmuch as, taking advantage of tender age of the victim, the accused played with her body for long

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period and subsequently, he married another girl, without considering the life of the victim girl and therefore, the accused is liable for offence of cheating. Further, he submitted that since the victim was a child in the eye of law, the accused is found to have committed the penetrative sexual intercourse with her and therefore, the accused is liable to be punished under the provisions of POCSO Act. Learned Public Prosecutor relied the decision of Hon'ble Supreme Court in **AIR 1996 SC 1393 State of Punjab vs. Gurmit Singh & ors** that *the court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.*

7. In another case of Hon'ble Supreme Court passed in **Criminal Appeal No.1114 of 2011 Mukesh vs. State of Chhattishgarh**, it was held that *the sole testimony of the witness is sufficient to establish the commission of rape even in the absence of corroborative evidence. Reliance has been placed on the decision of this court in the case of Mohd. Iqbal vs. State of Jharkhand which stated as under :- There is no prohibition in law to convict the accused of*

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rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

8. Further, Hon'ble Madras High Court in case of **Criminal Appeal (MD) No.98 of 2015, K. Muthu Mariappan vs. The State rep. by The Inspector of Police Armunganeri** wherein it was held that *in view of the other proved facts that the accused alone took PW2 to Chennai and had sexual intercourse with her, the culpable mental state is to be presumed. But the accused has not rebutted the said presumption. Therefore, I hold that he he had culpable mental state while taking PW2 from her village to Chennai only for the purpose of committing sexual assault. That apart, the presumption of guilt under section 29 of POCSO Act also, needs to be raised, as all the necessary fundamental facts have been proved.*
9. Apart from above, learned Public Prosecutor placed reliance on the decision of Hon'ble Delhi High Court in the case of **CRL. A. 766/2015 Raju Yadav vs. State**, wherein it was held that *it is trite law that conviction can be based on the sole testimony of the prosecutrix without any corroboration. Even in the absence of medical evidence, the appellant is liable to be convicted since the evidence of the prosecutrix is reliable. Delay in lodging the FIR has been explained by the prosecutrix.*
10. Per contra, learned Sr. counsel appearing for the accused submitted that there is serious lapse of delay for about 8 months in filing the FIR by the prosecutrix which clearly dent the credibility of her statement inasmuch as, the alleged occurrence took place in July, 2014 while the FIR was reached the police after long gap and since there is no proper explanation to the delay in lodging the FIR, as well as, the contents of the FIR is not supported by the testimony of the prosecutrix, no reliance can be placed upon the version of the prosecutrix. In support of above submission, he placed reliance on the decision reported in **2008 (3) GLT 55 Ajahar Ali vs. State of Assam** wherein, it was viewed that *the delay of 14 days in filing the complaint after the alleged occurrence cast a doubt on the veracity of the allegation made against the accused appellant. The explanation offered by the complainant is not satisfactory inasmuch as, it has been stated that negotiation was initiated to settle the matter at the village level. There is no indication as to what sort of settlement was sought to be made in regard to the aforesaid alleged serious offence. It was required that*

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the matter should have been reported to the police immediately after the incident looking at the seriousness of the offence but that was not done by the husband of the prosecutrix rather waited for some settlement.

11. He submitted that the FIR does not disclose the fact that there was forceful sex by the accused and thus, the case does not come within the purview of offence of rape by the accused. He submitted that the FIR also, does not disclose of 4 years time allowed at the village meeting to the accused to marry the prosecutrix. If the incident was so serious, the matter ought to have reported to the police immediately rather than, placed it before village level meeting for granting 4 years time to the accused to marry the victim. Thus, in the given circumstances of the case, the prosecutrix filed the case only because that she was not married by the accused and not for committing rape on her. He submitted that age of the victim was not properly ascertained by the prosecution for which there is doubt if the victim was a minor. He placed reliance on the decision reported in **(2014) 1 SCC (Cri) 677 Sujit Biswas vs. State of Assam**, where it was held that *undoubtedly, the FIR lodged has disclosed the previous statement of the informant which can only be used to either corroborate or contradict the maker of such statement. However, in the event that the informant is a person who claims to know the facts, and is also closely related to the victim, it is expected that he would have certainly mentioned in the FIR, all such relevant facts. The omission of important facts affecting the probability of the case, is a relevant factor under Section 11 of the Evidence Act to judge the veracity of the case of the prosecution. (Vide Ram Kumar Pandey v. State of MP, 1975 (3) SCC 815).*

12. In the case of **(2011) 1 SCC (Cri) 688 Alamelu & ors. vs. State represented by Inspector of Police** wherein, it was held that *the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made entry or who gave the date of birth is examined. The Headmaster has not been examined at all. Medical evidence showing age of girl to be between 17 and 19 years, X-ray report giving approximate age to be between 17 and 18 years, transfer certificate of a government school showing age not having been duly proved by the witnesses who signed it, held, prosecution failed to prove that girl was a minor, at relevant date, there is no satisfactory evidence to indicate that she was a minor.*

13. Further, learned Sr. counsel submitted that the requirements for constituting an offence of cheating is missing in the case in hand since the victim

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failed to show if the accused could not fulfill his promise of marriage to her and when time was allowed to marry the victim indicates that the accused did not marry the victim as because she was not attaining her marriageable age. He riled the decision reported in **2007 (2) GLR 200 Bipul Medhi vs. State of Assam** wherein, it was held that *failure of the petitioner to keep the promise to marry the opposite party may under circumstances of the case amount to mere breach of promise/ contract and in view of Illustration (g) appended to Section 415 IPC., it is evident that breach of promise/ contract simpliciter without any proof of the fact that such promise/ representation was made by the petitioner with knowledge that he would not marry the opposite party will bring the case within the meaning of Section 415 as well as Section 417 IPC. The prosecution has miserably failed to adduce any evidence whatsoever to show that during or before the alleged intercourse of the petitioner in-fact appellant had fraudulent or dishonest intention not to marry the complainant. In absence of any such circumstances in the evidence on record, the conviction and sentence imposed upon the petitioner cannot be maintained. The court further observed that the prosecutrix willingly consented for having sexual intercourse with the appellant with him he was deeply in love, not because he promised to marry her but because she also, desired it. In the circumstances, it would be very difficult to impute to the appellant knowledge that the prosecutrix has consented the consequences of misconception of facts arising out of his promise. In any event it would not be possible for the appellant to know what was in the mind of the prosecutrix when she consented because there were more reasons than one for her consent.*

14. Similarly, in **2013(7) SCC 675 Deepak Gulati vs. State of Haryana**, the Hon'ble Supreme Court held that *there is a distinction between the mere breach of a promise and not fulfilling a false promise. There must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. The failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to*



misperception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirely, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

15. In case of consent of the victim, Hon'ble Gauhati High Court in **Criminal Appeal No.143 of 2006, Subir Dhar vs. The State of Assam**, observed that we found in the present case firstly that there in no conclusive evidence that the victim was minor at the relevant time. Even than we can assume that she was at the verge of majority and has adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to. The physical relationship had clearly developed out of love and affection between both the parties. She was also, conscious about the complications and the issues regarding her marriage that the father of the accused may not be agreeable to the marriage of the appellant with her because of the caste problem. Even than she agreed to continue with the relationship with the appellant in-spite of expression of the appellant on the subject. On the other hand, there is no evidence to prove that since inception of the relation the appellant never intended to marry the victim girl to raise the allegation of false promise of marriage as has been raised by the prosecutrix. Rather, the evidence and circumstances of the case, suggestive of fact that appellant disclosed to all the family members of the informant/ victim that he will marry the victim girl and she need not be married to other person. He regularly took the victim girl with him and the affairs continued for five years and ultimately as apprehended by the accused appellant, he could not solemnize the marriage with the victim girl and the facts in the given case depict a picture that he could not fulfill the promise to marry for certain other reasons, but he is not guilty of making a false promise to marry. There is absolutely no evidence to prove that appellant had never intended to marry the victim girl. This court cannot be assured the fact that from the very beginning the accused has no intention to marry the victim girl.

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16. Continue to his argument, learned Sr. counsel submitted further that it is true that on the basis of evidence of solitary witness, conviction can be recorded against an accused but such conviction is permissible provided the witness is wholly



reliable. But in the instant case, the evidence of the victim/ prosecutrix neither tendered reliable evidence nor it probabilities that such incident occurred to her at the instance of the accused but her main grievance against the accused, apparently, is that the accused did not marry her in the light of decision of village meeting. He placed reliance on the decision reported in **(2015) 1 SCC (Cri) 293 Deny Bora vs. State of Assam.**

17. After hearing the above submissions based on the above propositions of law on various aspects of the case, it is pertinent to place on here the relevant evidence of the prosecution witnesses recorded during the trial of the case. It appears that the prosecution examined the sole victim of the alleged occurrence who is also, the prosecutrix of the case as PW1(*her name is not disclosed due to legal bar*). She deposed in the court that the accused was her neighbour. She had love affairs with the accused for last 7 years before filing the ejahar. In the month of July, 2014, she went to her sisters' house in Guwahati where the accused committed sexual intercourse with her. Thereafter, the accused used to come to the backyard of her house and committed sexual intercourse with her. She informed the same to her parents. Her father made a complaint about the same before village people and a meeting was held. In that meeting, the village people gave 4 years time to perform marriage between her and the accused since she was minor at that time. But the accused, depriving her, married another girl after a few months of the said meeting, defying the resolution of the village people. While she came to know that the accused was going to marry another girl, she lodged the present ejahar. The accused is working in BSF. She was medically examined at FAAMC & Hospital, Barpeta. She was not pregnant. Her statement was recorded u/s 164 CrPC., by Magistrate. Her date of birth is 30/6/1997. she proved the ejahar vide Ext.1 and her statement vide Ext.2.

18. In the cross-examination, PW1 stated that she has the ability to understand the good or bad things. Since she had love for the accused, she intended to marry him. Since the accused is a BSF employee, her family members were also, willing to give my marriage with the accused. She stated that she did not disclose to her sister regarding sexual intercourse with her by the accused in her house. She knew that sexual intercourse before marriage is not recognised by the society and is morally degrading. She stated that in the ejahar, it was not mentioned that within 4 years from the date of village meeting, the accused was supposed to marry her. At the very first in point of time, the accused did sexual

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intercourse with her in the month of July, 2014 but she lodged the complaint on 24/1/15. in the ejahar, she did not mention that the accused went to her sister's house in Guwahati and committed sexual intercourse with her and the accused committed sexual intercourse with her at the backyard of her house. However, she admitted that in her statement before the Magistrate and the police, she did not state that the accused committed sexual intercourse with her at her sister's house in Guwahati and at the backyard of her house. She further admitted that in the ejahar, she did not mention her actual age in the month of July, 2014 when the accused committed sexual intercourse with her for the first time. She has no photograph with the accused and the police did not seize any mobile by which the accused sent messages to her. Earlier she visited the house of the accused. She passed HSLC examination in the year 2012. While she lodged the case, her HSLC certificate was with her. But she could not say why her father did not produce her HSLC certificate before the I/O. Apparently, the evidence of PW1/ prosecutrix shows that she was deprived of to marry since the accused got married to another girl secretly after maintaining love affairs with her for long time.

19. PW2 Sri Dhanbor Rabha is the father of the prosecutrix. He deposed that the accused is his neighbour. The accused and his daughter had love affairs since 4/5 years before the date of lodging the ejahar. The accused promised to marry his daughter in a village meeting. The document is lying in the custody of Bichitra Das, the president of the village committee. At the time of the said village meeting, his daughter was a student of Class-X and due to her minor age, the accused took 4 years time to marry his daughter. The village meeting authorised both the families to meet and visit each other's house. By taking the advantage, the accused committed sexual intercourse with his daughter on many occasions and due to this, his daughter has been suffering mental agony and trauma. The accused spoiled the life of his daughter. But the accused secretly married a girl from Udaguri. When she rang the mobile of the accused, the accused threatened her that he will kill her. The accused is a BSF personnel. The terms and conditions of the village meeting were reduced into writings and all the village people we both the parties put the signatures on that document. The police took his signature on a blank paper. He handed over to the police the school certificate of his daughter vide Ext.3 with his signature. The MR.Ex.3(i) is the school certificate of his daughter.

20. In the cross-examination, PW2 stated that his daughter passed HSLC in the year 2013. The MR Ext.3(i) school certificate was issued on 12/11/15 and it was collected by the police from the school. In the certificate, there is no signature

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of Block Elementary Officer. Thus PW2 does not disclose anything of the incident which were happened in Guwahati and the backyard of the house of the prosecutrix. His evidence is found to be not consistent with the version of PW1.

21. PW3 Sri Raben Rabha stated that there was a village meeting held in 2012 and there was love affairs between the victim girl and the accused for about 2 years. In the village meeting, it was established that there was love affairs between the accused with the victim and the accused sought 4 years time to marry the victim as she was a minor at the relevant time. The president of the meeting was Pabitra Das. He was present in the said meeting. All the above terms and conditions of the meeting have been reduced to writing and the documents are lying with the president. Before completion of 4 years, the accused got married with another girl by violating terms and conditions of the village meeting and as such, the present case has been filed. The police took his signature in the seizure list vide Ext.3.

22. In the cross-examination, PW3 stated that the father of the victim told him about love affairs between the accused with the victim. The victim wanted to marry the accused for which the village meeting was held. In the last meeting, the guardians of the accused expressed that they would not bring the victim as wife. He admitted that he did not state to the police that in that meeting, the accused sought 4 years time to marry the victim since she was a minor. The evidence of PW3 thus shows that he only knew about the 4 years time allowed to the accused for marrying the victim/ prosecutrix and subsequently, the accused backed out by marrying another girl.

23. PW4 Sri Jadab Ch. Das stated that he being a villager, know that there was love affairs between the accused with the victim. The father of the victim made a complainant to the village committee regarding the matter. Accordingly, in the year 2012, a meeting was held in his village where he was not present. But he came to know from the village people that the accused had admitted about his love affairs with the victim and the accused sought 4 years time in that meeting to marry the victim girl and it was also, resolved in the meeting that both the parties would have easy access to each other. But the accused violated the terms and conditions of the village meeting and got married with another girl and that is why the victim was cheated and filed the present case. This witness also, discloses of holding of village meeting to allow 4 years time to the accused who violated the terms and conditions of the meeting.

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24. The evidence of PW5 Sri Open Rabha is that about 2 years back, a meeting at his village was held where he was present with other villagers. The accused and the victim declared that they loved each other for 5/6 years. In that meeting the accused sought 4 years time to marry the victim as she was a minor at the relevant time. But after expiry of 2 years, the accused married another girl by breaching his promise made before the village meeting. In that meeting, it was also, held that if any of the parties committed breach of the terms and conditions of that village meeting, the party at fault, shall pay Rs.2,00,000/- to the village society. But the accused did not pay Rs.2,00,000/- in terms of the resolution of the village meeting. The terms and conditions of the village meeting had been reduced to writing. He did not know what was the quarrel and its reason between the accused and the victim. The police took his signature vide Ext.3(3).

25. In the cross-examination, PW5 stated that the victim expressed her wants to marry the accused in that meeting. The victim did not produce her birth certificate in the meeting. This witness in addition to holding of meeting for the victim/ prosecutrix, discloses of payment of money for violation of terms of the meeting which is new as far as evidence of PW1, 2, 3 and 4 is concerned.

26. PW6 Sri Suresh Ch. Das, an Inspector of police, deposed that on 14/12/15, while he was posted as Officer-in-charge of Salbari police station, he after going through the case diary, found prima-facie case and submitted the charge-sheet against the accused vide Ext.4 with his signature. He was the I/O for submitting only the charge-sheet against the accused.

27. PW7 Pranab Hazarika, the I/O of the case, deposed that on 24/1/15 he was posted at Ananda-Bazar Out-post as In-charge and on that day, he received an ejahar from PW1 and accordingly, he made the GDE No.369 dated 24/1/15 and forwarded the same to Officer-in-charge of Salbari police station for registering a case. Hence Salbari PS. Case No.05/15 was registered and he was entrusted to investigate the case. He proved the ejahar vide Ext.1 where he made GD entry. He examined the victim and other witnesses and sent the victim for medical examination and for recording her statement u/s 164 CrPC. He could not trace out the accused to apprehend. One co-accused Pankaj Das appeared before him. He prepared the sketch map vide Ext.5.

28. In the cross-examination, the I/O PW7 stated that he has not

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mentioned anything regarding place of occurrence in Ext.5. at the relevant time, the victim was prosecuting her study in Class. HS. 2nd year. He did not collect the HSLC passed certificate or birth certificate of the victim. He stated that PW1 did not state to him that at the very first time, the accused committed sexual intercourse with her in Guwahati and thereafter, the accused committed sexual intercourse with her at the backyard of her house but stated to him that the accused by way of inducement, committed sexual intercourse with her. The I/O further stated that in the FIR, the victim did not mention anything about her date of birth or her age. It is also, not mentioned in the FIR that the accused committed sexual intercourse with her in Guwahati and at the backyard of her house. He did not find any love letter and he did not examine Pabitra Das nor he received or seized any document relating to the terms and conditions of compromise between the parties. The I/O disclosed that PW2 did not state to him that the accused promised before the village meeting that he would marry the victim within 4 years and the document relating to the marriage of his daughter with the accused, was lying with Pabitra Das. Further the I/O stated that PW3 did not state to him that there was a village meeting held in the year 2012 and the terms and conditions of the meeting were reduced into writing and the document was lying with Pabitra Das and the accused sought 4 years time to marry the victim as she was minor.

29. PW8 Pranjal Prakash Chakrabarty, another I/O of the case, deposed that on 20/3/15, while he was posted at Ananda-Bazar Out-post as In-charge, on that day, the Officer-in-charge of Salbari police station, entrusted him to investigate the present case and accordingly, he examined the accused persons on their appearance in the police station and he collected the medical report of the victim. On 14/11/15, the father of the victim gave him the school certificate of the victim, issued by Headmaster Mathura Talukdar of No.1691 Sonafuli LP school. He seized the school certificate vide Ext.3 with his signature.

30. In the cross-examination, PW8 stated that he did not examine the Headmaster who issued the school certificate of the victim. He did not make any attempt to collect the HSLC admit or certificate of the victim or her birth certificate.

31. PW9 Dr. Bharati Das deposed that on 28/1/15 at FAAMC & Hospital, Barpeta, she medically examined PW1 and found that hymen was torn present and spermatozoa was not seen in the vaginal swab after microscopic examination and

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she opined that 1) there was no sign of recent sexual intercourse, 2) pregnancy could not determine as urine test result was not available, 3) no mark of injury or violence on her body parts, 4) age of the victim was above 20 years and she filed the report vide Ext.6 and proved the same. There is no dispute over the finding given by the doctor in respect of the prosecutrix. Apparently the medical examination by the doctor does not lend any support to the prosecution story.

32. Further the prosecution examined PW10 Pabitra Das. He was the president of the meeting held for settling the matter between the accused and the victim as appears from evidence of other witnesses. He stated that he has been discharging as president of Sonafuli village committee since 2012 and Ajay Rabha is the secretary. He brought two proceeding books of the said committee from 14/5/09 to 19/4/15. The accused and the victim are the members of his committee. The first proceeding book commencing from 14/5/09 to 19/4/15 is marked as Ext.7, while Ext.8 is the proceeding book commencing from 26/8/12 to 25/11/12. In both the proceedings books, there is no any discussion relating to the allegation between the accused and the victim, having no serial number, maintained by him. He did not know if there is any proceeding book relating to the accused and the victim. He heard that the accused did not marry the victim and as such, the case was filed. Apparently, PW10 does not lend support to PW1 and 2 with witnesses of the prosecution over their claim of holding of such village under president-ship of PW10 and the proceeding was reduced to writing.

33. PW11 Ajay Rabha deposed that he is the secretary of the Sonafuli village committee in 2012. Ext.7 and 8 proceeding books of the committee. He knew the accused and the victim. In the cross-examination, PW11 stated that any proceeding held in the committee, has been maintained by him in writing. Similar to PW10, this witness also, does not speak of writings of the village meeting to resolve the dispute between the prosecutrix with the accused.

34. PW12 Smti. Golapi Bharali is the Headmistress of No.1691 Sonafuli LP school since 01/02/16. she stated that as per admission register, PW1 was admitted on 20/2/2001 at Class-"Ka" and at that time as per record, her age was 5 years and her name appeared in the register at Sl. No.160. At that time Late Photoram Rabha was the Headmaster of the said school who put his signature. Her predecessor in the school was Mathura Talukdar and Ext.7 is the school admission register. She also, produced the school certificate vide M.Ext.3 and issued by then Headmaster Mathura Talukdar which she proved. In the cross-examination, PW12

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stated that there is no any date of birth of PW1.

35. From the above discussion of the evidence of the prosecution witnesses, it appears that PW1/ prosecutrix narrated three dates of incidents which occurred to her at the instance of the accused. Firstly, she was raped by the accused in July 2014 in Guwahati and secondly, thereafter, she was raped by the accused at the backyard of her house and subsequently, the accused married another girl in breach of terms and conditions of the village meeting. The prosecutrix actually never termed it as rape but stated it to be sexual intercourse by the accused with her. It appears that there is no dispute that the prosecutrix had love affairs with the accused. The prosecutrix never stated that the accused committed sexual intercourse with her against her will and consent. But PW2 who is the father of PW1 narrated a different story regarding sexual intercourse by the accused. PW2 stated that after the village meeting, where it was allowed both the parties to meet freely, taking advantage of the same, the accused committed sexual intercourse with the prosecutrix. Thus from the version of the prosecutrix, it appears that the accused committed sexual intercourse with her before the village meeting was held while PW2 discloses that the sexual intercourse was committed by the accused after holding of the village meeting. Hence, it appears that there is contradictory version comes from the mouth of the father and the daughter. It therefore, suggests that the prosecutrix concealed the true facts from her father.

36. As far as age of the prosecutrix is concerned, the defence disputed that she was not a minor at the relevant time. In this connection, the medical evidence is very clear. The medical officer clearly stated that the prosecutrix was above 20 years of age on 28/1/15. But the prosecution examined the teacher of the school of the prosecutrix who disclosed that as per school register, the age of the prosecutrix was 5 years on 20/2/2001. This means that the prosecutrix was 18 years of age in the year 2014 when the first incident took place. On the other hand, the prosecutrix in her cross-examination, admitted that she completed her HSLC examination in 2012. If this is so, the age of the prosecutrix should be 18 years of age in 2014. Thus, it is clear from evidence on record that the prosecutrix was a major at the time of first incident of sexual intercourse in July 2014 which was allegedly committed by the accused at the house of her sister in Guwahati.

37. But from the evidence of the prosecutrix, it appears that she did not disclose such incident of sexual intercourse by the accused to her sister. From the contradictory version of PW2, it appears that the prosecutrix even did not disclose

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such incident to other family members at her native village. She further kept mum for long more than one year to disclose it before the police. Apart from above, the prosecutrix alleged that the accused after July 2014 incident, used to commit sexual intercourse with her at the backyard of her house. But PW2 never disclosed the same in the evidence. Keeping the such serious incident of sexual assault behind the tongue, amounts to indicate that the prosecutrix had consent for such sexual encounter with the accused and she was willing party to such occurrence. The medical evidence does not also, support the claim of the prosecution. She admitted that previously she did not disclose the fact of sexual intercourse committed by the accused in Guwahati and at the backyard of her house either to the Magistrate or to the I/O. Surprise enough to note that the prosecutrix omitted to disclose such serious incidents committed to her by the accused. That apart, the prosecutrix is found to be major at the time of incident and as such, it is expected that such person must know the consequences of sexual intercourse before the marriage. In view of the evidence of the prosecutrix, it appears that such act of sexual intercourse by the accused cannot be termed as rape within the meaning of section 376 IPC. Since the prosecutrix is found to be major at the relevant time and the medical evidence does not support the version of the prosecutrix, the offence u/s 4 of POCSO Act does not attract at all to this case.

38. In addition to above allegation, the prosecution alleged that the accused cheated the prosecutrix by marrying another girl and by breaching the terms and conditions of the village meeting. In her evidence, the prosecutrix discloses that the accused was allowed 4 years of time to marry her in the village meeting. Her such version was corroborated by PW2, 3, 4 and 5 that the accused got 4 years of time to marry the prosecutrix. But before 4 years period, the accused got married to another girl. If time was allowed to the accused in terms of settlement arrived at in the village meeting, there is no evidence on record to show that the accused by any fraudulent means, obtained such time to marry the prosecutrix. It is not claim of the prosecutrix that the accused induced her in any manner to wait for marriage with the accused. That apart, it appears that the I/O contradicts the claim of PW2 and 3 that they omitted to say previously that such village meeting was held to allow time to the accused to marry the victim/prosecutrix. Such omission is significantly erodes the credibility of the claim of PW2 and 3 that if such meeting for the purpose as stated, was held with terms and conditions imposed to the accused.

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dishonest intention of the accused at the very inception of the transaction. But from the evidence of the prosecutrix, it is not found that the accused dishonestly induced her to have sex with him. Rather it shows that the prosecutrix being a major girl, had full consent to the sexual intercourse by the accused since she was in love with him. At best, it can be said from the evidence on record that the accused breached the terms and conditions imposed in the meeting by not marrying the prosecutrix. The evidence of PW5 even discloses that the default party to the terms and conditions of the village meeting, has to pay Rs.2,00,000/- to the village society. That apart, the evidence of PW10 and 11 who are the president and secretary of village committee discloses that no such village meeting was recorded in their official record. The resolution book of the village committee was produced by PW10 which does not indicate any writing record of such village meeting. PW11 also contradicts the claim of holding such village meeting as disclosed by PW1 supported by PW2, 3, 4 and 5. Hence, it creates doubt if any proceeding of the such meeting as stated by the witnesses of the prosecution was held and its proceeding was reduced to writing, kept in custody of PW10.

40. Apparently, breach of terms and conditions of the village meeting cannot be held as the offence of cheating committed by the accused to the prosecutrix. If the accused committed the such breach of terms and conditions of the village meeting, he may be made liable to pay the amount imposed. The evidence of the prosecutrix clearly indicates that she filed the case as because, the accused did not marry her and instead of her, the accused married another girl by depriving her. Perhaps, the prosecutrix was of the view that since she had love affairs, the accused would marry her. But that is enough to constitute the offence of cheating unless, it is able to show that the accused had dishonest intention from the beginning not marry her and he dishonestly induced the victim/ prosecutrix to deliver something/ her property to the accused. If the accused dishonestly induced the prosecutrix to settle her grievance in the meeting and he dishonestly obtained 4 years of time to marry her, while subsequently, backed it up, than, the accused may be held for payment of money as imposed in the meeting. Thus, there is lack of sufficient material in the evidence of the prosecutrix and other witnesses of the prosecution to implicate the accused in the offence of cheating u/s 417 IPC. Hence, the accused cannot be held for the offence of cheating to the prosecutrix.

41. Lastly, it appears from the evidence of the prosecutrix that she filed the case after one year of the incident which was happened first in July 2014. But the dispute only arises when the accused secretly married another girl instead of

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her. Apparently, there was no dispute between the parties after the first occurrence and also, subsequent commission of sexual intercourse by the accused at the backyard of the house of the prosecutrix. The case was filed only when the relation of the accused became stained with the prosecutrix after his marriage with another girl. The evidence of the prosecution witnesses could not clearly indicate the chain of happening in the occurrence of the case. It is also, not apparent from the evidence on record that when the accused married another girl or when the village meeting was held. It will be however, not wrong to hold that the accused married after the village meeting as because the evidence tendered to the effect that the accused breached the terms and conditions of the meeting. Admittedly, there is no any explanation from the prosecutrix as to why she did not lodge the complaint immediately after the incident of July 2014 in Guwahati or after happening of the subsequent incident at her backyard of her house. The prosecutrix mentioned in the Ext.1 that she when contacted the accused over phone before his secret marriage with another girl, the accused replied that he has no relation with her. Thus, it becomes crystal clear that the prosecutrix filed the case after the accused got married to another girl. If the prosecutrix knew that the accused was about to marry another girl secretly for which she felt being deprived, she ought to have filed the case immediately before the such marriage. In this way, there is apparently delay in lodging the FIR by the prosecutrix. But the prosecution has failed to explain such delay in lodging the FIR by the prosecutrix. It is expected that in criminal cases, the FIR should be filed immediately, to avoid any doubt over the probability of the facts of the case. The delay is not an unusual phenomenon. However, if there is delay, it must be explained clearly to avoid any confusion and doubt. But the instant case, the prosecution could not explain anything of the delay in lodging Ext.1 by tendering reliable, cogent and satisfactory evidence for which it has shaken the credibility of the prosecution case.

42. Under the above facts and circumstances of the case, it is found that the prosecution has not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 376/417 IPC., r/w Section 4 of POCSO Act. Hence the accused is acquitted and set at liberty. His bail bond shall however, remain in force u/s 437-A CrPC. The seized article shall be returned to the owner as claimed in due course of time. Forward a copy of judgment to the District Magistrate, Baksa, Moshalpur u/s 365 CrPC. The victim/prosecutrix is entitled to get compensation under Assam Victim Compensation Scheme, in due course of time.

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Given under the hand and seal of this court on this 4th day of September, 2018.

Dictated and corrected by :


C. Das,
Sessions Judge
Baksa
Baksa, Moshalpur


Sessions Judge
Sessions Judge,
Baksa
Baksa, Moshalpur

Typed by :

P. Deka, Com. Typist

**ANNEXURE:****List of prosecution witness:**

PW1 ... Prosecutrix/informant
PW2 ... Sri Dhanbor Rabha
PW3 ... Sri Raben Rabha
PW4 ... Sri Jadab Ch. Das
PW5 ... Sri Open Rabha
PW6 ... Sri Suresh Ch. Das ... I/o
PW7 ... Sri Pranab Hazarika ... I/o
PW8 ... Sri Pranjal Prakash Chakrabarty ... I/o
PW9 ... Dr. Bharati Das ... M/o
PW10 ... Sri Pabitra Das
PW11 ... Sri Ajay Rabha
PW12 ... Smti. Golapi Bharali

List of defence witness:

Nil

List of documents exhibited:

Ext.1 ... ejahar
Ext.2 ... statement of the victim/ prosecutrix
Ext.3 ... seizure list
Ext.4 ... charge-sheet
Ext.5 ... sketch map
Ext.6 ... medical report
Ext.7 ... proceeding book-1
Ext.7-A ... school admission register
Ext.8 ... proceeding book -2

MRExt.3 ... school certificate

[Handwritten signature of Sessions Judge, Baksa]
Sessions Judge,
Baksa