

IN THE COURT OF THE SPECIAL JUDGE ::::: BONGAIGAON

Special (P) Case No. 21(BGN)/2017.

U/S 6 of POCSO Act.

(Arising out of Bongaigaon P.S Case No. 498/2017)

State of Assam

Vs.

Ismail SheikhAccused.



PRESENT :- Sri Binod Kr Chetri,
Special Judge (under POCSO Act),
Bongaigaon.

Appearance :-

*For the State : Smti R. Choudhury, Special Public
Prosecutor.*

For the accused: Sri K. Das, advocate for the accused.

Date of Argument : 12.03.2019.

Date of Judgment : 26.03.2019.

JUDGMENT AND ORDER

1. The factual matrix of the prosecution case, in short, is that the informant Minasha Khatun lodged an ejahar alleging that the accused on 26.6.2017 at about 10 A.M in the pretext of visiting Eco Park at Bongaigaon picked up her daughter, aged 14 years from Bhowlaguri in his red colour car and went to a kutch road of Kajalgaon and inside the car raped her and again taking her in a house at Kajalgaon raped her second time against her will and dropped her at B.G.Colony.

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2. FIR on the incident was lodged on 26.6.2017 by the mother of the victim before the Officer Incharge, Dhaligaon Police Station. On receipt of the FIR, the O/C, Dhaligaon Police Station, registered a case being Dhaligaon Police Station Case No. 117/2017 under section 376 IPC read with section 4 of POCSO Act and entrusted S.I. Chandradhar Uzir to investigate the case. As the place of occurrence falls under Bongaigaon jurisdiction the case was registered at Bongaigaon Police Station being no.498/2017 read with section 4 of POCSO Act and S.I Dipak Kr Baisya was entrusted to investigate the case. Accordingly, the Investigating Officer visited the place of occurrence, recorded the statement of the witnesses and on completion of investigation, laid charge-sheet against the accused Ismail Sheikh under section 4 of POCSO Act.

3. On perusing police report and hearing both sides, having found a prima facie case, charge under section 6 of POCSO Act was framed against the accused. The accused pleaded innocence when charge was read over and explained to him and claimed for trial.

Point for determination:-

*Whether on 26.6.2007 at about 10.20 A.M at
Bhowlaguri under Bongaigaon police station
committed aggravated penetrative sexual assault on
the victim child inside a maruti car at Salbagan and
thereafter in a house at Saljara and thereby
committed an offence punishable under section U/S
6 of POCSO Act ?*

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4. In this case, to bring home the charge against the accused, prosecution has examined as many as 10 witnesses. Statement of the accused was recorded U/S 313 Cr.P.C in which, he denied all the allegations levelled against him and pleaded innocence. Heard the learned counsels of both sides.

Discussion, decision and reasons there of:-

5. In this case prosecution has examined as many as 11 witnesses (mentioned in Appendix I) to the judgment and out of them relevant witnesses are PW 1 (victim), PW 8 (informant), PW 9 (doctor) and PW 11 (Investigating Officer).

6. This case was registered on the FIR dated 26.6.2017 (Ext 5) of PW 8 alleging that on that day at about 10 A.M accused on the pretext of taking the informant's daughter (PW 1) to visit Bongaigaon Eco park took her in his vehicle at Kajalgaon and raped her daughter inside the vehicle and from there took her to a house, where the accused again raped her daughter aged about 14 years.

7. Contrary to her allegation in Ext 5, her evidence is that on that day her daughter had to the Eco park with the accused and seeing them in the park the village people caught hold of them and on being asked by them she lodged the FIR against the accused alleging that the accused has raped her daughter where as no such rape has taken place upon her daughter aged about 19 years.

8. In her cross PW 8 stated that after this incident her victim daughter has been married with the accused and presently they are

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living together. She also stated that prior to her daughter's marriage with the accused, her daughter was married earlier with another person.

9. PW 1, the victim girl, deposed that on that day at about 10 A.M she had been to Bongaigaon Eco park with the accused and the village people finding them in the park brought them to the village and asked her mother to lodge the case. She has given her statement before the Court on being produced by the Police and Ext 1 is her statement.

10. In her cross she stated that she was earlier married with another persons named Nawaz Ali with whom she has taken divorce and that she is in love with the accused and going to marry him. She gave her statement earlier on being tutored by the people.

11. PW 1 gave her evidence on 22.3.2018 and at that time she was not married with the accused, whereas her informant mother, PW 8 adduced evidence on 2.8.2018 and at that time she stated about her daughter's marriage with the accused.

12. Both PW 1 and PW 8 has made a 'U' turn from what they have alleged against the accused during investigation stage at the time of giving evidence before the Court. If the fact that the accused has proposed to marry PW 1 or that she has already married PW 1, as revealed from the evidence of PW 1 and PW 8, these two witnesses will naturally not implicate the accused while giving evidence before the Court during trial.

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13. In the above background it is to be seen whether in fact the alleged incident of rape did take place and the informant and victim are deposing otherwise before the Court, either on threat or inducement or otherwise.
14. First and foremost, PW 1 went on her own with the accused in his car to Eco park. The allegation is that instead of taking to Eco park the accused took her to some other place, raped her at two places and then brought her and left her in front of her house. This is the allegation in Ext 5 (FIR) and PW 1 in her statement U/S 164 Cr.P.C (Ext 1) has also made almost the same allegation against the accused.
15. In her earlier statement (Ext 1) PW 1 has also stated that she was not knowing the accused earlier and that when the accused took her, the accused disclosed his name as Ismail Sheikh.
16. The interesting part of the evidence of PW 1 and PW 8 is that PW 1 did not make any hue and cry while she was taken by the accused in his car and these two places also, as mentioned in the FIR, where the accused raped her against her will. Further interesting part is that the accused brought her back and dropped her at B.G.Colony, fromwhere PW 1 went to her house house. At that place also, after getting down from the vehicle, PW 1 did not make any hue and cry and silently went to her house. This conduct on the part of the victim PW 1 itself creates a doubt on the veracity of the allegation against the accused.
17. Going further, the evidence of doctor (PW 9), it is seen that PW 1 was examined on the very next day i.e on 27.6.2017 at

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12.30 P.M at JSB Civil Hospital Kajalgaon and during examination PW 9 did not find any sort of injury on the body of PW 1. There was no stain of semen on her vagina or laceration thereon. Had the accused raped her against her will there must have been some sort of injury on her body in the ensuing scuffle, if in fact there was any such forceful rape by the accused.

18. Coming to the age of the victim girl the medical examination opined her age to be above 17 years and below 20 years. There can be no variation of \pm 2 years as because the opinion is specific that PW 1 was above 17 years and below 20 years. PW 1 herself while giving evidence before the Court has mentioned her age as 19 years. At the time of giving evidence there may be some other reason also for PW 1 to mention her age above 18 years. But the fact remains that she was above 17 years on the date of alleged incident and below 20 years, which supported the version of PW 1 that her age was 19 years when she adduced evidence before the Court on 22.3.2018.

19. PW 11 (Investigating Officer) during investigation vide seizure list (Ext 6), seized the 'Nikahnama' (marriage certificate dated 15.2.2017) of PW 1 with Nawaz Ali. That marriage certificate has not been produced in evidence but PW 11 deposed of such seizure.

20. The only evidence appearing against the accused is in the evidence of PW 2 and PW 4 to the extent that they heard from PW 1 that the accused took her in the vehicle from Madraji patty to Eco park and took her towards Leela Gas agency and raped her there and fromthere accused took her to his house and there also raped her and

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after that accused brought her and dropped her near her house at B.G. Colony.

21. The evidence of PW 2 and PW 4 is hearsay and the same not corroborated by the evidence of victim herself as because she had deposed otherwise before the Court and the veracity of her allegation has already been mentioned above. PW 3 simply heard accused taking PW 1 in his vehicle. PW 5 don't know about the matter. PW 6 and PW 7 has not implicated the accused.

22. PW 10 was the initial Investigating Officer. When he was at Dhaligaon Police Station he took the girl for medical examination and got her statement recorded U/S 164 Cr.P.C. Ext 5 is the FIR in this case and it was endorsed to him by O.C Dhaligaon Police Station for investigation.

23. It need to be mention here that this case was initially registered as Dhaligaon Police Station case no.111/2017 U/S 376 IPC read with section 4 of POCSO Act as the FIR (Ext 5) was lodged before O.C Dhaligaon Police Station. During investigation it was revealed that the alleged incident falls under the jurisdiction of Bongaigaon Police Station and learned Chief Judicial Magistrate, Chirang transferred the FIR vide order dated 30.6.2017 to learned Chief Judicial Magistrate, Bongaigaon who vide order dated 5.7.2017 sent the FIR to O.C Bongaigaon Police Station for doing the needful. Thereafter, the investigation was done by PW 11 and on completion of investigation submitted the charge sheet (Ext 8) against the accused U/S 4 of POCSO Act.



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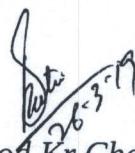
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24. From what have been discussed above, it is held that prosecution has miserably failed to prove that the accused kidnapped or taken away the victim girl against her wish and forcefully committed rape on her and as such failed to establish the charge U/S 6 of the POCSO Act or under the relevant provision of IPC against the accused. Hence, the accused is acquitted of the charge U/S 6 of POCSO Act and set at liberty forthwith.

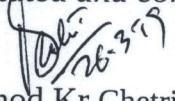
25. Before parting with the judgment it is felt pertinent to mention that the informant and the victim girl has made false allegation against the accused for which the accused had to undergo custody for about 3 $\frac{1}{2}$ months from 4.7.2017 to 31.10.2017.

26. Given under my hand and the seal of this Court on the 26th day of March, 2019.




(Binod Kr Chetri)
Special Judge
Bongaigaon.
Bongaigaon.

Dictated and corrected by me,


(Binod Kr Chetri)
Special Judge,
Bongaigaon.
Bongaigaon.

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A P P E N D I X

Prosecution witness:

PW 1 – Sahanara Khatun.
PW 2 – Lalchand Sheikh.
PW 3 – Ranjit Barman.
PW 4 – Nur Alam Seikh.
PW 5 – Ashutosh Gogoi.
PW 6 – Billal Hussain Seikh.
PW 7 – Narayan Debnath.
PW 8 – Minara Khatun.
PW 9- Dr Kukumoni Basumatary.
PW 10 – SI, Chandradhar Uzir.
PW 11- SI Dipak Kr Baishya



Defence Witness:

Nil.

Documents Exhibited by Prosecution:

Ext-1 Statement U/S 164 Cr.P.C.
Ext-2 Medical report.
Ext-3 Seizure list.
Ext-4 Sketch map of the place of occurrence.
Ext-5 Ejahar/FIR.
Ext 6 Seizure list.
Ext 7 Seizure list.
Ext 8 Charge sheet.

Material Exhibited by prosecution:

Nil.

Defence Exhibit:

Nil.

Binod Kr Chettri
(Binod Kr Chettri)
Special Judge,
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Special Judge,
Bongaigaon,