IN THE COURT OF SPECIAL JUDGE (F.T.C), LAKHIMPUR, NORTH LAKHIMPUR.

PRESENT

Sri P.C. Kalita, A.J.S., Special Judge (F.T.C.), Lakhimpur, North Lakhimpur.

Special (POCSO) Case No.113/2019.

(U/s- 341 of I.P.C., R/w- Section 8 of the POCSO Act)

State of Assam
-VersusSri Markuj Bag

... <u>Accused person</u>.

APPEARANCE

For the State : Mr. M. Gogoi, Ld. Special P.P. For the Accused : Mr. B.B. Gohain, Ld. Advocate.

Date of evidence : 05.12.2019, 06.12.2019, 07.12.2019 &

10.01.2020.

Argument heard on : 24.01.2020, 01.02.2020 & 06.02.2020.

Judgment delivered on : 11.02.2020.

JUDGMENT

1. The prosecution case, inter-alia, in brief, is that on 15.06.2019, the informant Smti. Berna Khalkho lodged an ejahar at Bihpuria Police Station alleging that on that day, at about 4:00 PM, while her victim daughter (P.W.1), aged 14 years, was going to her maternal uncle's house, situated of the same village, the accused person Sri Markuj Bag, on the road in front of his house, wrongfully restrained her victim daughter and tried to drag her (victim) away to his house with intent to commit rape on her (victim).

- 2. On receipt of the ejahar, the O/C of Bihpuria P.S. registered a case, vide Bihpuria P.S. Case No.310/2019, dated 15.06.2019, u/s- 341/376/511 of IPC, and then the police conducted the investigation of the case, and after completion of the investigation of the case, ASI, Sri Dharmeswar Das has submitted the charge-sheet u/s-341/376/511 of IPC, R/w- Section 8 of POCSO Act against the accused person Sri Markuj Bag.
- 3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, charges u/s- 341 of IPC, R/w Section 8 of the POCSO Act are framed against the accused person Sri Markuj Bag, the same are read over and explained to him to which he has pleaded not guilty.
- 4. During trial prosecution has examined as many as 7(seven) witnesses. After closure of the prosecution witnesses, the accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINTS FOR DETERMINATION:**

- i) Whether the accused person, on or about 15.06.2019 at about 4:00 p.m. at No.2 Borbali under Bihpuria P.S., wrongfully restrained the victim, daughter of the informant Smti. Berna Khalkho, on the road in front of your house, while she was going to her maternal uncle's house, and thereby committed an offence punishable under section 341 of the IPC, as alleged?
- ii) Whether the accused on the same date, time and place, after restraining the victim girl, had committed sexual assault on her person, and thereby committed an offence punishable under Section 8 of the POCSO Act, as alleged?

DISCUSSIONS, DECISION AND REASONS THEREOF:

- 6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.
- 7. PW-1 (prosecutrix) stated that the informant Smti. Berna Khalkho is her mother. She knows the accused person, who is her relative, father's elder brother. One day, about 5 months back, at about 4:00 PM, while she was going to her maternal uncle's house, the accused person on the road in front of his house, wrongfully restrained her and dragged her away to his house by touching in her breast, intending to commit rape on her. While she made hue and cry, her mother arrived at the place of occurrence, and then the accused person had fled away. Her mother took her back to her house. Police got her medically examined and also got recorded her statement u/s- 164 of Cr.P.C. Ext.1 is her statement recorded u/s- 164 of Cr.P.C. and Ext.1(1) and Ext.1(2) are her signatures thereon.
- 8. PW.2, Smti. Berna Khalkho (informant), stated that the victim (P.W.1) is her daughter. She knows the accused person, who is the elder brother of her husband. One day, about 5 months back, at about 4:00 PM, while her victim daughter was going to her (victim) maternal uncle's house, on the way, accused person made attempt to commit rape on her victim daughter. Her victim daughter made hue and cry and on hearing her cries she arrived at the place of occurrence, and then the accused person fled away from the place of occurrence. On being asked, her victim daughter told her that the accused person had touched in her breast. For this, she lodged an ejahar at Bihpuria Police Station. Ext.2 is the said ejahar and Ext.2(1) is her signature thereon.

Police got her victim daughter medically examined. Police recorded her statement u/s- 161 of Cr.P.C.

- 9. PW.3, Smti. Meena Khalkho, stated that she knows the informant and the informant's victim daughter. She knows the accused person also. Accused person is the elder brother of her husband. At this stage, prosecution has declared hostile this witness.
- 10. PW.4, Iliash Kiskata, stated that he knows the informant and her victim daughter. He also knows the accused person. One day, about 5 months back, he heard that the accused person had committed rape on the victim girl and for this, this case has been filed. One nearby shopkeeper named Stephen, informed him about the incident. Police recorded his statement u/s- 161 of Cr.P.C.
- 11. P.W.5, Pitar Khalkho @ Pitu, stated that he knows the informant and her victim daughter. He knows the accused person also, who is his nephew. One day, about 8 months back, while he was working in his Basti land, he heard from one Iliash that the accused person had committed rape on the victim girl and on the same day, there was a quarrel between them. Police recorded his statement u/s-161 of Cr.P.C. At this stage, prosecution has declared hostile this witness.
- P.W.6, Smti. Cheten Tirki, stated that the informant is her daughter and the victim girl is her grand-daughter. She knows the accused person. She could not remember the exact date of the incident. On the day of occurrence, while she was returning home from his shop, she had entered into the house of the informant and found the victim girl sleeping. On being asked, the victim girl told her that while she was going to her maternal uncle's house, the accused person committed rape on her.

13. PW-7, Sri Dharmeswar Das, A.S.I. of Police (I.O.), stated that on 15.06.2019, he was working as an A.S.I. at Banderdewa Police Out Post under Bihpuria Police Station and on that day one Smti. Berna Khalkho lodged an ejahar at Bihpuria Police Station, which was received and registered as Bihpuria Police Station Case No.310/2019, u/s- 341/376/511 of I.P.C. by the then O/C of Bihpuria Police Station. On receipt of the F.I.R., the then O/C of Bihpuria Police Station entrusted him to investigate into the said case. Ext.2 is the F.I.R. and Ext.2(1) is the signature of the informant Smti. Berna Khalkho, which he can identify now. After entrustment, on the following day, he visited the place of occurrence, examined the informant as well as the other witnesses u/s- 161 of Cr.P.C. He prepared a rough sketch map of the place of occurrence. Ext.3 is the said sketch map of the place of occurrence and Ext.3(1) is his signature thereon. The victim girl was examined by the police of Bihpuria Police Station and her statement was recorded u/s- 161 of Cr.P.C. Thereafter, the victim was sent to Bihpuria CHC for getting her medically examined and thereupon, on 19.06.2019 he brought the victim before the Court wherein her statement was recorded u/s- 164 of Cr.P.C. During the period of his investigation, he has collected the medical examination report of the victim girl from the concerned hospital. He has made several attempts to arrest the accused Sri Markuj Bag, but he could not arrest him. On 18.07.2019, he got intimation from the Hon'ble Court that the accused person had surrendered before the Court and he had already been sent to the Jail hajot. After that, he visited to the Jail hajot and recorded the statement of the accused person. After completion of the investigation of the case, he found sufficient incriminating materials against the accused person for his involvement in the commission of the alleged offence. Accordingly, he has submitted the charge-sheet u/s341/376/511 of I.P.C., R/w- Section 8 of the POCSO Act against the accused person. Ext.4 is the charge-sheet and Ext.4(1) is his signature thereon.

Appreciation of evidence: Offence u/s- 8 of the POCSO Act

Age of the victim

- 14. It is not in dispute that the victim (P.W.1) is a minor girl below 18 years of age.
- 15. There is no eye-witness to see the occurrence.
- Here, the victim (P.W.1) is the prime witness in the instant case. Her deposition is that on the day of occurrence, at about 4:00 a.m., while she was going to her maternal uncle's house, on the way, accused person dragged her to his house by holding in her breast in order to commit rape on her.

The victim girl in her statement recorded u/s- 164 of Cr.P.C., inter alia, stated that the accused person tried to take away her to his house by holding in her hands.

From the above, it is seen that the victim girl (P.W.1) in the Court deposed that the accused person had dragged her away by holding in her breast, whereas the victim, in her statement recorded u/s-164 of Cr.P.C., stated that the accused person had dragged her away by holding in her hands.

Thus, the victim girl has made different statements at different points of time regarding holding of her on her body i.e. in the breast and in the hands by the accused person.

17. On the other hands, the informant (P.W.2), who is the mother of the victim (P.W.1) in the ejahar (Ext.1), stated that the accused person attempted to take away her victim daughter to his house by holding in her body in order to commit rape on her (victim).

18. Besides, there is evidence on record to show that the incident occurred at about 4:00 PM on a public road nearby a shop, but not seeing the alleged occurrence by anybody in spite of her (victim) making hue and cry, creates doubts on the prosecution case.

So, the testimony of P.W.1 (victim) to the effect that on the day of occurrence accused person by touching either in her breast or in her hands, and dragged her in his house, is not found to be trustworthy and reliable.

- 19. Though, the mother of the victim (P.W.2), on hearing hulla arrived at the place of occurrence, but she did not witness the incident of sexual assault as alleged by the victim. She is a hearsay witness only.
- 20. P.W.3 and P.W.5 have been declared hostile by the prosecution.
- 21. P.W.4 is a nearby shop keeper, who during cross, stated a different story. According to him, there was previous dispute between the informant and the accused person. On the day of occurrence the informant and her victim daughter had gone to the house of the accused person and they assaulted the accused person, and therefore, to save themselves, they have filed this case against the accused person. So, the filing of this case by the informant, out of grudge, cannot be ruled out.
- P.W.6, Smti. Cheten Tirki, stated that on being asked, the victim girl stated that the accused person had committed rape on her (victim), on the road, whereas, the victim (P.W.1) in her deposition nowhere stated that she told Smti. Cheten Tirki (P.W.6) about the incident of rape.

So, the version of P.W.6 is not reliable at all.

23. P.W.7 is the Investigating Officer (I/O).

(Offence u/s- 341 of I.P.C.)

24. There is no evidence on record to show that accused

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person wrongfully restrained the victim (P.W.1) on the road, on her way

to her maternal uncle's hosue.

25. In view of the above discussions and considering all

aspects, I hold that the prosecution has failed to prove the case u/s- 341

of IPC, R/w- Sec. 8 of the POCSO Act against the accused person

beyond all reasonable doubts. Hence, I acquit him from the said

offences on benefits of doubts.

26. The accused person is set at liberty forthwith.

27. Send a copy of this order to the Jail Authority, Lakhimpur,

North Lakhimpur, to do the needful.

28. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 11th

day of February, 2020.

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita) Special Judge (FTC), Lakhimpur, North Lakhimpur.

Transcribed & typed by me: Sri Manish Kumar (Steno)

APPENDIX:

Prosecution witnesses:

P.W.1- (Prosecutrix),

PW.2, Smti. Berna Khalkho (informant),

PW.3, Smti. Meena Khalkho,

PW.4, Iliash Kiskata,

P.W.5, Pitar Khalkho @ Pitu,

P.W.6, Cheten Tirki &

P.W.7, A.S.I., Sri Dharmeswar Das (I/O).

Prosecution exhibits:

Ext.1- Statement u/s- 164 of Cr.P.C.

Ext. 2- Ejahar.

Ext.3 – Sketch map.

Ext.4 – Charge-sheet.

Defence witnesses:

Nil.

Defence exhibits:

Nil

(P.C. Kalita) Special Judge (F.T.C), Lakhimpur, North Lakhimpur.