

Present: Shri C. Das

Judge, Special Court Baksa, Mushalpur

JUDEMENT IN SPECIAL POCSO CASE NO.104/2018

u/s 8 of POCSO Act

State

-versus-

Sri Ravi Ram @ Rabia

.... Accused

Appearance:

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

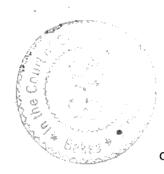
For the accused : Mr. M. Mazumdar, Advocate

Date of evidence recorded: 11.3.19, 28.5.19, 23.10.19

Date of argument : 21.11.19 Date of judgment: 5.12.19

JUDEMENT

- The case of the prosecution briefly, is that on 29.8.18, the 1. complainant/ victim girl(name is withheld) lodged a FIR before the In-charge of Darranga Mela police out post, alleging inter-alias that the accused who is her brother, under influence of ganja, used to touch her in inappropriate manner and Baksa Mushalpur when she opposed to it, the accused assaulted her physically. Even on same day, the accused at around 2 am, the accused did the same thing.
 - 2. The police accordingly, registered the Darranag Mela police out-post GD Entry No.404 dated 29.8.19 and forwarded the said FIR to the Officer-in-charge of Tamulpur police station for registering a formal case. Hence, the Officer-in-



charge of Tamulpur Police station registered the PS Case No.321/18 and started the investigation. During the investigation, I/O visited the place of occurrence, examined the witnesses and drew up its sketch map. I/O collected the school certificate of the victim girl to confirm her age. The accused was arrested in the case. At the end of investigation, I/O submitted the charge-sheet against the accused to face trial in the court.

- 3. The accused when appeared in the court, he was furnished with the copy of the case. After hearing the parties and on perusal of the material on record, the charge u/s 8 of Protection of Children from Sexual Offences Act (in short : 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 during the trial, examined as many as, (six) 6 witnesses including I/O to support its case. After that, the statement of the accused was recorded u/s 313 of CrPC where the accused denied all incriminating circumstances appeared against him in the evidence with the plea that he was falsely implicated in the case since, he objected to the relationship of the victim girl with a boy. The accused however, declined to adduce any defence evidence. The argument of the parties was heard at length and the evidence was perused carefully.

POINT FOR DETERMINATION:

5. Whether on 29.8.18 at about 2 am at Darranga under Tamulpur police station, the accused committed sexual assault to the victim girl/ complainant by touching her and beating her with sexual intent ;

DECISION AND REASON THEREFORE:

- 6. It appears from the record, there is no dispute that complainant/ victim girl is the sister of the accused. The occurrence took place at night in the rudge Spi Court house of the complainant. It is admitted fact that both the accused and the victim Baksa Mushalpur resided in the same house due to relationship.
 - 7. Learned Public Prosecutor submitted in the argument that it is an unique case where the sister brought the allegation of sexual intent of the brother



accused. He submitted that the evidence of the prosecution disclosed that the accused was a habitual consumer of ganja and hence, under influence of the contraband substance, it is possible that the accused might have committed such offence against his own sister. The magnitude of such crime is so high and recurrence that the sister of the accused, was compelled to file case against her own brother/accused. Further, he submitted that in the Indian social context, the relationship between the sister and brother is holy in nature but the accused committed such heinous crime against his sister. He asserted that the evidence of the prosecution witnesses have able to bring home the charge against the accused and as such, the accused ought to be punished as per law.

- 8. Per contra, learned counsel for the accused submitted that it is true that the sister brought such sexual intent allegation against the accused but the actual fact is that the allegation is totally false and fabricated to frame the accused since he objected to the relationship of the victim with a boy who is not suitable for her. Even then, the victim continued to maintain such relationship with the local boy and had planed to flee away with the boy. He submitted further that if the evidence of the prosecution witnesses is carefully perused particularly, the evidence of the victim girl itself, it would disclose no sexual intent appeared from the side of the accused. It is natural that as brother and the resident of same house, the accused entered into the room of the victim at night which usually used to do so but there is no evidence that the accused had any intention to cause sexual harassment to his sister. It cannot be imagined out of total stretch of mind that the accused could go to such extent to touch the body of his sister with sexual intent. Hence, the allegation is totally false and the accused is not involved in the crime as alleged. He continued to submit that the evidence of the prosecution failed to bring home the charge against the accused and as such, the accused may be acquitted.
- 9. After hearing submissions and counter submissions, it is now proper to go into the evidence of the prosecution on record. The accused is implicated in the offence under POCSO Act. In case of POCSO Act, the victim must be a child within the meaning of Section 2(d) of POCSO Act. Hence, at the first, the age of the victim need to be determined.
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 10. It is admitted fact that the parents of the victim and the accused did not come forward to participate in the trial of the case. There is no medical evidence tendered by the prosecution to know the age of the victim girl. Thus, if the evidence of PW1 who is the victim/ complainant of the case, is perused, it

appears that she stated that she was 15 years old at the time of occurrence. She submitted that school certificate to support her age proof which is exhibited as MRExt.1. But the MRExt.1 was proved according to the law. In the cross-examination, PW1 stated that she was a student of Class-VIII. Hence, the MRExt.1 cannot be accepted as valid document to ascertain the correct age of the victim. Further, in the cross-examination of PW1, she disclosed that she was in Class-VIII at the relevant time of the occurrence. On the other hand, the accused as brother of PW1, did not dispute over the claim of PW1 that she was 15 years old at the time of incident. She is found to be a student of Class-VIII and as such, she is under the age of 16 years. Hence, there is no other different material found against the age of PW1 as per her claim. Accordingly, it is proper and safe to accept that the victim girl(PW1) was below 18 years of age at the time of occurrence. Therefore, she was a child within the meaning of Section 2(d) of POCSO Act.

11. After determining the age of the victim girl, now, the duty is cast upon to go into the main allegation of the victim against the accused. PW1 stated inter-alias that on the fateful day at about 2 pm., when she returned to home from school, the accused came and started to beat her by a belt of rice-cooker. Hence, she made an inquiry for such beating by the accused. Local persons came to inquire over the matter. But the accused replied that she is his sister and it is his will to beat his sister. Further she stated that she used to sleep with her mother in a room. The accused prior to the incident, used to come to her room at night when she went sleeping and started to touch her body parts. On her protest, the accused replied that he came to check her. He mother suffered from mental illness. She reported the incident to her mother who asked the accused to sleep properly. In the mean time, local public gathered at the spot. She started to weep at her courtyard. In the mean time, two friends of the accused came to the spot to accompanying him. Thereafter, she informed the police and filed the ejahar vide Ext.1 with her signature. The police sent her to record statement vide Ext.2 with her signatures.

12. In the cross-examination, PW1 stated inter-alias that she did not dige Spi Court state in Ext.1 and Ext.2 that she was physically assaulted by the accused by means a Mushaipur of a belt of rice-cooker and her mother was unsound mind. The accused used to caution her to continue her study properly. Smti. Durga Khandar who is her landlady, came to rescue her from the accused. She had love affairs with a boy namely; Ganesh and the accused pacified her to leave Ganesh. Accordingly, she left the company of Ganesh.

- 13. PW2 Gopinath Khandal deposed inter-alias that PW1 is his tenant. According to him, he had no knowledge about any tussle going between the accused and PW1. He was reported by PW1 about the incident of touching her body by the accused. On his inquiry, PW1 reported him that the accused used to touch her body. Hence, he referred the matter to local bichar. Later on, the FIR filed the ejahar.
- 14. In the cross-examination, PW2 denied that he did not state before the police that the victim reported the incident of touching her body by the accused.
- 15. PW3 Smti. Chandrakala Brahma deposed inter-alias that on the fateful day, at about 8 pm., a quarrel took place between the accused and PW1. Accordingly, on hearing hue and cry, she went to the place of occurrence and saw PW1 was weeping. PW1 informed her that the accused used to consume drugs and came home at night and created noise under influence of intoxication and that as such, PW1 could not sleep at night properly and that the accused disturbed her by removing cloths while she was sleeping on the bed.
- 16. In the cross-examination, PW3 denied that she did not state before the police that a quarrel took place between the accused and PW1 and the accused also, disturbed PW1 by removing cloths while sleeping on the bed. She stated that there was huge gathering of public at the place of occurrence. PW1 had love affairs with a boy.
- 17. PW4 Sushil Kr. Jha deposed inter-alias that on the fateful day at about 7 pm., he heard that a boy attempted to rape a girl of the village and as such, there was hue and cry. Accordingly, he went to the house of the accused and saw huge gathering of public. He saw the accused was sitting on a bench and the accused denied any attempt to commit rape on PW1. The accused told that he tried to beat PW1 since PW1 did not come to home. Even then, local public pacified the Courtaccused.

Baksa Mushalour 18.

18. In the cross-examination, PW4 denied that on the fateful day at about 7 pm., he heard that a boy attempted to rape a girl of the village and as such, there was hue and cry and he saw the accused was sitting on a bench and denied the allegation of rape. He came to know that PW1 already fled with a boy with whom she had love affairs.

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 - 19. PW5 Tarabir Tamang deposed inter-alias that on the fateful day, at about 7 pm., he came to know that the accused under influence of liquor, misbehaved with PW1. Hence, he came to the spot and saw huge gathering of public.
 - 20. In the cross-examination, PW5 stated that at present, PW1 fled away with a boy with whom she had love affairs.
 - 21. The evidence of I/O Nayanmoni Das as PW6 is that on 29.8.18, at Darrangamela OP, he received the FIR from PW1 and he registered GDE No.404 dated 29.8.18. He was endorsed to investigate the case. During the investigation, he visited the place of occurrence and examined the victim with other witnesses. He sent the victim to record her statement u/s 164 CrPC. There was no allegation of physical or sexual assault made by the victim for which no medical examination was conducted. He drew up the sketch map of the place of occurrence vide Ext.3. He arrested the accused and after completing the investigation, he filed charge-sheet against the accused vide Ext.4 with his signature.
 - After going through the evidence of the prosecution witnesses, it appears that the occurrence took place at the rented house of PW1 and the accused. PW1 alleged in her evidence, stated that the accused assaulted her physically by means of belt of rice-cooker and the accused used to touch her body at night while sleeping. But from the cross-examination of I/O, it comes to notice that PW1 omitted to say that the accused caused physical assault to her by rice-cooker. Hence, I/O did not refer PW1 for medical examination. Since the above version is omitted by PW1 in her statement u/s 161 CrPC., it amounts to contradiction of her version. Hence, such evidence of PW1 is not reliable to believe on this point. Further, PW1 claims that the accused touched her body while sleeping at night at her home. PW2 corroborated the said version of PW1 but he was not eye-witness of occurrence. Moreover, PW2 omitted to say above version of PW1 to I/O in his previous statement u/s 161 CrPC. Therefore, it cannot be held that PW2 gave a true version in respect of claim of PW1.
- Judge Spi Count Baksa Mushalbur 23.
 - 23. PW3 contradicted such version of PW1. It appears that PW3 disclosed that PW1 told that the accused disturbed her by removing the cloths while sleeping on the bed. PW3 did not state that PW1 disclosed that the accused touched her body but disclosed removing the cloths while sleeping. PW4 gave another discrepant version that he heard that the accused attempted to rape PW1

which PW1 did not disclose the same at all. PW5 never state that the accused attempted to rape PW1 but stated that the accused misbehaved PW1 which is not consistent with the version of PW1. Thus, the evidence of PW2, 3, 4 and 5 are not direct. They came to spot after hearing the hue and cry. On perusal of their evidence, it appears also that their versions are contradictory to each other. It fails to corroborate the version of PW1 consistently and cogently to place confidence on the version of PW1.

- 24. Apart from above, it appears that PW1 omitted to disclose any sexual assault upon her by the accused in her statement u/s 161 CrPC. But her evidence that the accused touched her body at night while she was sleeping in her room, or removing the cloths while she was sleeping on the bed, amounts to indicate that the accused had sexual intent to do the same. Hence, the version of PW1 on the above points is found contradictory to her own versions. No material of sexual intent of the accused can be presumed from the evidence of PW1. Moreover, the evidence of PW3 shows that PW1 had love affairs with a boy which was objected by the accused. The evidence of PW4 and 5 shows that PW1 already fled away with the boy. All these evidence discloses that relationship between the accused and PW1 was stained due to love affairs of PW1. Hence, it is highly possible that due to such stained relationship, PW1 lodged aggravated allegation against the accused who is her brother to harass him. In view above, there is doubt if PW1 gave a true and reliable version against the accused. Accordingly, the accused is given the benefit of doubt.
- 25. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 8 of POCSO Act and the accused is acquitted and set at liberty. His bail bond is however, remained in force for another 6 months u/s 437-A CrPC. Forward a copy of judgment to the District Magistrate, Baksa at Mushalpur u/s 365 CrPC. The court recommends for payment audge Ep: Court of adequate compensation to the victim of the occurrence by DLSA, Baksa. Inform Baksa Mushalpuraccordingly.

26. Given under the hand and seal of this court on this 5^{th} day of December 2019.

Dictated and corrected by:

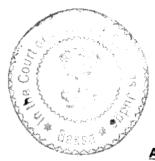


C. Das,

Judge Special Court

Judge, Special Court
Baksa Mushalpur

Transcribed by : B. Brahma, Steno



ANNEXURE:

List of prosecution witness:

PW1 \dots the victim girl (name withheld)

PW2 ... Gopinath Khandal

PW3 ... Smti. Chandrakala Brahma

PW4 ... Sushil Kr. Jha

PW5 ... Tarabir Tamang

PW6 ... Nayanmoni Das ... I/o

List of defence witness:

Nil

List of documents exhibited:

Ext.1 ... FIR

Ext.2 ... statement of victim u/s 164 CrPC

Ext.3 ... sketch map

Ext.4 ... charge-sheet

Judge, Special Court 12/12/12
Judge Spi Court
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