# IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

## SPECIAL CASE NO.3/2015.

#### **PARTIES**

State of Assam. ... Complainant.

-versus-

Sri Arun Bori. ... Accused.

## **PRESENT**

Md. Imtiaz Ali, Special Judge, Lakhimpur, North Lakhimpur.

#### **APPEARANCE**

Mr. Jogeswar Gogoi, the learned Public Prosecutor, for the State.

Mr. Sanjib Gogoi, the learned Advocate for the accused.

Date of charge : 18.08.2015.

Dates of

Prosecution evidence : 06.10.2015, 07.10.2015 and 046.10.2016.

Date of statement : 16.11.2016.

Date of argument : 07.02.2017.

Date of Judgment : 20.02.2017.

# <u>JUDGMENT</u>

1. Accused, Sri Arun Bori stands charge under Section 448/376/511 IPC RW Sec.8 of the POCSO Act for alleged commission of house trespass by entering into the dwelling house of the informant, and attempting to commit rape as well as sexual assault on the victim girl.

## **Facts of the Case**

2. Prosecution allegation as disclosed from the F.I.R. (Ext.1) lodged on 15.03.2015 by the informant before the In-charge of Nowboicha Out Post, in brief, is that on 14.03.2015 at about 8.30 pm, her

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victim daughter, aged about 14 years was sleeping in her (informant) related brother, namely Sri Kumud Taye's house during absence of any male member in the house, the accused, Sri Arun Bori had entered into the said house, sat on the bed, where the victim was sleeping, woke her up and gave her an amount of Rs.100/- only to her and attempted to fulfill his lust, and when the victim raised alarm, the accused threatened her with dire consequence.

#### **Investigation**

- 3. On receipt of the F.I.R. the In-charge of Nowboicha Police Out Post made GD entry No.220 dtd.15.03.2015 and forwarded the same to the Officer-in-charge of North Lakhimpur Police Station for registration of a case, and on receipt of the said F.I.R., the Officer-in-charge of North Lakhimpur PS registered a case bearing North Lakhimpur PS Case No.261/2015 u/s 448/376/511 IPC RW Sec.8 of the POCSO Act, 2012. During the course of investigation, the I.O. visited the place of occurrence, prepared the sketch map of the place of occurrence, arrested the accused, recorded the statement of the witnesses, and got the victim girl medically examined, and after completing the investigation, finally submitted charge sheet against accused, Sri Arun Bori u/s 448/ 376/ 511 IPC RW Sec.8 of the POCSO Act, 2012.
- 4. Subsequently, the case was committed to the court of the Special Judge by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, vide Order dtd.24.04.2015, as the offence u/s 8 of the POCSO Act is exclusively triable by the court of Special Judge, and accordingly, on appearance of the accused, charges u/s 448/ 376/ 511 IPC RW Sec.8 of the POCSO Act, 2012 had been framed against him. The charge was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.
- 5. The accused in his statement recorded u/s 313 CrPC denied to have committed any crime.
- 6. I have heard Mr. J. Gogoi, the learned Public Prosecutor and Mr. Sanjib Gogoi, the learned counsel appearing for the accused.

Now, the points for determination in this case are — Whether the accused, Sri Arun Bori on 14.03.2015 at about 8.30 pm at village Pahumara Mirigaon under North Lakhimpur PS, had committed house trespass into the house of the informant in order to commit rape upon the victim girl, aged about 14 years? AND — Whether the said accused had attempted to commit rape upon the said victim after waking her up from the bed, who was alone sleeping in the said house and forcibly gave her an amount of Rs.100/- to allow him to fulfill his lust? AND — Whether the accused had committed sexual assault on the said victim girl, as alleged?

#### **DISCUSSION, DECISION & REASONS THEREOF**

- 8. To bring home the charge levelled against the accused, prosecution has examined as many as 6 (six) witnesses, namely PW.1, the mother of the victim girl, PW.2, the victim girl, PW.3, Smti Tulika Taye, PW.4, Dr. Moromi Kalita, PW.5, Smti Bhabani Pawe and PW.6, Sri Hiranya Patar, the Investigating Officer of the case.
- Now, let me consider the evidence of PW.1, who is the mother of the victim girl of the case. She deposed that the occurrence took place in the month March, 2015, and at the time of occurrence, she was in her house, and the victim girl went to her maternal uncle's house along with her cousin sister at about 4 pm. She also deposed that the accused gave a sum of Rs.100/- to the victim girl with intent to do bad act with her, but the victim refused to accept the same and came to her house and informed her (PW.1) about the occurrence, and on the next day of the occurrence, she lodged an ejahar (Ext.1) at Nowboicha OP. She also deposed that police came and took the victim girl to North Lakhimpur Civil Hospital and produced her before the court for recording her statement.
- 10. During cross examination, PW.1 stated that at the time of occurrence, Tulika was also present in the house of maternal uncle of the victim. She denied that the accused gave a sum of Rs.100/- to the victim to buy something when she goes to school as the victim happens to be his niece.
- 11. PW.2 is the victim girl, who deposed that the occurrence took place on 14.03.2015 at about 8.30 pm. She went to her

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maternal uncle's house along with Tulika as her maternal uncle and aunt were not at home on that day, and when she woke up from sleep, the accused gave her a sum of Rs.100/- and then, she being afraid rushed to her house and informed the matter to her mother. She also deposed that she did not know the reason as to why the accused had offered her the money, but she did not accept the money. She also deposed that thereafter, her mother lodged the case against the accused.

- 12. During cross examination, PW.2 stated that at the time of occurrence, she was present in her maternal uncle's house along with her cousin sister.
- 13. PW.3, Smti Tulika Taye deposed that on the day of occurrence, as her mother was not present in the house, so the victim went to their house to stay with her, and at the time of occurrence, she was sleeping with the victim girl and her younger sister. She also deposed that the victim girl suddenly woke up from sleep and rushed to her house by crying, and she did not tell her what had happened to her.
- 14. PW.4, Dr. Moromi Kalita, the M.O of the case, deposed that on 15.03.2015, she had examined the victim girl and found as follows: Identification mark: one cut mark over right knee.

Height: 3 ft. Weight: 35 kg.

Teeth: 28 nos.

Breast: developing stage.

Axilary and pubic hair: scanty.

Vulva and Vagina : no injury. Hymen – present. Uterus – normal size.

On laboratory examination, no spermatozoa seen. On ossification test, age of the victim was found to be more than 15 years and below 17 years.

15. The M.O. had opined that the age of the victim girl was above 15 years and below 17 years, and there was no apparent injury mark over her private parts or over anywhere on the body, and no recent sign of sexual intercourse.

- 16. PW.5, Smti Bhabani Pawe deposed that on the day of occurrence, the victim girl was taken by her cousin sister, Tulika to their house as Tulika's parents were away from the house, and at the time of occurrence, the accused was watching TV. She also deposed that the accused got up on the bed of the victim while Tulika was going to bring her grandmother and the accused gave a sum of Rs.100/- to the victim girl and asked her not to disclose the matter to any other, and then the victim due of fear rushed to her house by crying and informed the matter to them.
- 17. PW.6, Sri Hiranya Patar, the I.O of the case, deposed that on 15.03.2015 the ejahar was lodged by the informant and accordingly, he made GDE and forwarded the ejahar to the O.C of North Lakhimpur PS for registering a case and he took up the investigation of the case, and during investigation, he had visited the place of occurrence, prepared sketch map of the place of occurrence, recorded the statement of the witnesses, caused medical examination of the victim girl, got her statement recorded u/s 164 CrPC. He also deposed that on completion of the investigation, he had submitted the charge sheet against the accused u/s 448/376/511 IPC RW Sec.8 of the POCSO Act.
- 18. Considering the evidence as above on record, it is seen that the informant (PW.1), who is the mother of the victim girl (PW.2) has deposed that on the day of occurrence, the victim went to the house of her maternal uncle with her cousin sister, Tulika at about 4 pm, and the accused gave a sum of Rs.100/- to her victim daughter with intent to do bad act with her, but her victim daughter refused to accept the same and returned to her house and informed the matter to her (PW.1), and on the next day, she lodged an ejahar against the accused. The victim (PW.2) stated that she along with her cousin sister, Tulika Taye went to the house of said Tulika as Tulika's parents were away from the house, and when she woke up from sleep, the accused gave her a sum of Rs.100/- and then she being afraid rushed to her house and informed the matter to her mother (PW.1). So, from the evidence of the informant and the victim girl, it appears that the accused simply gave a sum of Rs.100/- to the victim girl. The victim girl (PW.2) did

not know as to why the accused gave her the money, so she refused to accept the same. PW.3, Smti Tulika Taye is the cousin sister of the victim with whom, the victim girl went to said Tulika's house. According to PW.3, at the time of occurrence, she was sleeping with the victim girl and her younger sister, Popi, and at that time, the victim girl suddenly woke up from sleep and rushed to her house by crying without telling her as to what had happened to her. PW.4 is the Medical Officer, who had examined the victim girl after the occurrence. According to the M.O., she had not found any injury mark on the private parts of the victim and the hymen of the victim was found intact. The M.O opined that the age of the victim was above 15 years and below 17 years and no sign of any sexual intercourse. PW.5 stated that on the day of occurrence, the victim girl was taken by her cousin sister, Tulika to their house as Tulika's parents were away from the house, and at the time of occurrence, the accused was watching TV. She also deposed that the accused got up on the bed of the victim while Tulika was going to bring her grandmother and the accused gave a sum of Rs.100/- to the victim girl and asked her not to disclose the matter to any other, and then the victim due of fear rushed to her house by crying and informed the matter to them. So, the informant (PW.1), victim girl (PW.2) and her companion (PW.3) have not supported the allegation made in the ejahar (Ext.1). PW.6 is the formal witness being the I.O of the case, who had conducted investigation and on completion of investigation, he had submitted the charge sheet against the accused. It appears that the victim herself did not state anything regarding any sexual act done by the accused on her as she simply stated that when she woke up from sleep, the accused gave her a sum of Rs.100/- and on being afraid, she rushed to her house and informed the matter to her mother. The victim girl did not utter a single word of sexual assault made to her by the accused during her testimony before the court.

19. In that view of the matter, it is seen that it does not appear in details of the alleged incident which was given in the ejahar lodged by the informant, PW.1, who is the mother of the victim. It says that on 14.03.2015 at about 8.30 pm, her victim daughter, aged about 14 years was sleeping in her (informant) related brother, namely Sri Kumud Taye's house

during absence of any male member in the house, the accused, Sri Arun Bori had entered into the said house, sat on the bed, where the victim was sleeping, woke her up and gave her an amount of Rs.100/- only to her and attempted to fulfill his lust, and when the victim raised alarm, the accused threatened her with dire consequence. However, during deposition before the court, the informant and the victim girl had given a different version as pointed by her in the ejahar (Ext.1). So far as the offence u/s 448/376/511 IPC and Sec.8 of the POCSO Act are concerned, it may be mentioned that in view of the averment made in the ejahar, Ext.1, it cannot be said that the essential ingredients of those sections are made out. The only allegation was that the accused had attempted to fulfill his lust when the victim was sleeping on the bed, but there is no explanation as to how and in what manner, the victim was sexually assaulted. Rather, the victim girl stated that when she woke up from sleep, the accused offered her a sum of Rs.100/-, which she did not accept and on being afraid, she rushed to her house and informed the matter to her mother (PW.1). Under Sec.8 of the POCSO Act, it must be shown that the accused with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. There is no such averment either in the ejahar or in the evidence adduced by the witnesses, particularly the victim.

20. That being so, this court is of the view that the prosecution has failed to bring home the charge levelled against accused, Sri Arun Bori beyond all reasonable doubt. Accordingly, I find the accused not guilty under the charged sections of law, and thus, I acquit him and set him at liberty forthwith if not required in any other case.

Judgment is pronounced and delivered in open court under seal of this Court with my signature on this 20<sup>th</sup> February, 2017.

( I. Ali ) Special Judge, <u>Lakhimpur, North Lakhimpur.</u> Contd... Dictated & corrected by me -

( I. Ali ) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

## **APPENDIX**

# 1) PROSECUTION WITNESSES:

PW.1 - Smti Anjali Minz.

PW.2 - Sri Raju Minz.

PW.3 - The victim girl.

PW.4 - Smti Mangri Kharia.

PW.5 - Sri Makhan Munda.

PW.6 - Dr. (Mrs.) Bharati Gogoi.

PW.7 - Dr. Hridayananda Baruah.

PW.8 - Sri Imlus Minz.

PW.9 - Sri Tankeswar Gogoi, the Investigating Officer of the case.

# 2) List of Exhibits:

Ext.1 - F.I.R.

Ext.2 - Statement of the victim.

Ext.3 - Report.

Ext.4 – X-Ray Report.

Ext.5 – Report.

Ext.6 – Charge sheet.

Ext.7 – Sketch map.

( I. Ali ) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>