IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.17/2015

U/S 448/376/323 IPC r/w Section 4 of the POCSO Act.

[Committed by the learned J.M.F.C., Morigaon in G.R. Case No.528/2015]

Present: Mr. D. K. Das,

Sessions Judge, Morigaon.

State of Assam

Vs

Sh. Sonmoni Baniya

Date of Charge :-24.08.2015.

Date of recording evidence :-03.02.2017, 25.09.2017, 12.05.2017,

11.09.2017.

Date of Argument :- 04.10.2017.

Date of Judgment :- 07.10.2017.

Appearance for the Parties

Advocate for the State:- Mr. A. Kalam, Ld. P.P.

Advocate for the accused:- Mr. U.C. Roy, Ld. Advocate.

JUDGMENT

1. Prosecution case in brief is that on 11.03.2015, at about 06.00 PM, the accused person SonmoniBania, had illegally trespassed into the house of the informant while she was doing her household workandforcefully by gagging her mouth with a piece of cloth (Gamosa) committed rape upon the informant. The informant has further stated that at the time of the occurrence of the incident when her mother came and saw the incident then her mother caughthold of the

accused person. Instantly, the accused started assaulting her mother with a dao. Immediately, the informant's mother was taken to the Morigaon Civil Hospital.

On the next morning, the informant Nitumoni Das lodged an ejahar before Morigaon PS. On receipt of the ejahar, the O.C. of the Morigaon PS registered a case vide Morigaon P.S. Case No.77/2015, U/s 448/376(i)/326 of IPC r/w Section 4 of the POCSO Act.

Investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, drew up sketch map of the place of occurrence, seized one torn black t-shirtfrom the place of occurrence, examined the victim U/s 161 Cr.PC and also got the victim and her mother medically examined. Thereafter, the I.O. brought the victim to the learned Court for recording her statement U/s 164 Cr.P.C. Thereafter, the I.O. collected the medical report. During the investigation, the I.O. arrested the accused person and produced before the learned Court below, wherefrom, he was remanded to judicial custody. Upon completion of investigation, the O.C. of Morigaon PS submitted charge-sheet against the accused person U/s 448/376(i)/323 of IPC r/w Section 4 of the POCSO Act. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. Subsequently, the accused person was let off on court bail. Accordingly, the accused person appeared before this Court and he was furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. On receipt of the case record and after having heard Ld. Counsel of both sides and basing upon materials on record my learned Predecessor framed charges U/s 448/376/323 of IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused to which he pleaded innocence and claimed to be tried.

2. Point for determination:

(i) Whether the accused on the eventful day i.e. on 11.03.2015 at around 06.00 P.M. at village Jaluguti under Morigaon P.S. in the

- district of Morigaon, illegally entered into the house of the informant, Smt. Nitumoni Das?
- (ii) Whether the accused on the same date, time and placecommitted rape on Smt. Nitumoni Das?
- (iii) Whether the accused on the same date, time and place voluntarily caused hurt to Smt. Taramai Das (the mother of the informant), by means of a blunt object?
- (iv) Whether the accused on the same date, time and place committed penetrative sexual assault on Smt. Nitumoni Das, a minor girl, aged about 17 years?
- **3.** Prosecution in this case has examined as many as 4 (four) PWs including mother of the informant. After the process of recording evidence of the witnesses so adduced by the side of prosecution was concluded, the abovenamed accused person was subjected to examine U/s 313 Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. He further declines to adduce defence evidence.
- **4.** I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

- In this case prosecution has alleged that on the eventful day i.e. on 11.03.2015 at around 6.00 P.M., the accused committed rape upon the informant and assaulted the mother of the informant when she caught hold of the accused person at the time of occurrence of the incident.
- (a) **PW-1**(Taramai Das) stated in her evidence that, the complainant is her daughter. She knows the accused as a resident of their locality. The alleged incident took place about 1½ years ago in the evening hour. On the date of the occurrence of the incident, she went to Morigaon and in the evening she returned back to her house from Morigaon. As soon as, she came to her house, she found complete silence in her house. She called upon her daughter but did not get any

response. When she went inside her room, she saw that the accusedwas committing rape upon her daughter, Miss Nitumoni Das on the floor of the room. She saw the accused above her daughter. Her daughter could not shout as because the accused pressed her mouth by a piece of cloth (Gamocha). She immediately caught the accused and tried to lift him from the body of her daughter. A scuffle took place between her and the accused and in that situation the accused assaulted her on her hand and also on her head by a knife and as a result of the scuffle she sustained injuries. Blood was oozing out. But despite that situation, she restrained the accused to her level best. During the scuffle, the Tshirt, which the accused was wearing, was torned out. Her daughter became speechless after the incident. After the incident, she also became senseless. On the next day, she regained her sense at Morigaon Civil Hospital. She sustained several injuries on her body as a result of the incident, which was caused by the accused. Her daughter was also examined by Doctor. Police asked her about the incident. Police seized a piece of cloth (The ganjee of the accused person) and she put her signature in the seizure memo. Ext. 1 is the seizure list. Ext. 1(1) is her signature. The formal ejahar was lodged by her daughter herself. At the time of incident, her daughter was below 16 years old. During her re-examination, she stated that she is the mother of the victim girl Nitumoni Das. However, her daughter (victim) expired in the month of March, 2017 at her matrimonial house.

In her cross-examination, she deposed thatthere were near about 7 family members near her house namely, Umesh Bania, Reboti Devi, Maloti Das, SatramBania etc. There is a motorable road in front of her house. When she gained her sense in hospital, she came to know that some neighboring people gathered at the place of occurrence. At the time of incident, they had only two rooms in their house. She did not submit any age certificate of her daughter to Police. She did not submit any age certificate of her daughter before the Court also. The accused was causing disturbances to them prior to the occurrence of the incident. The land, where they constructed their house, was purchased from the mother of the accused. Police met her at the hospital after three days of the occurrence of the incident. At the time of occurrence of the incident, her husband

was not present at the house. She could not remember the date of birth of her daughter.

She denied the suggestion that, she did not state before police that as soon as she went inside her room she caught hold the accused and tried to lift him from committing rape of her daughter, and in that situation, she sustained injuries due to the assault of the accused by a knife. PW-1 further stated that, shedid not see the seized materials in the Court.

She further denied the suggestions that, the accused did not commit rape of her daughter and the accused did not assault her by a knife. She also denied that the accused did not enter into her house. She further denied the suggestions that, they lodged a false case against the accused due to land dispute between them. PW-1 also denied that her daughter was about 18 years old at the time of incident.

(b) PW-2(Dr. Ajit Kumar Phukan) stated in his evidence that, on 11.03.2015, he was posted at Morigaon Civil Hospital as SDM & HO. On that day, he had examined Smti. Taramai Das, wife of Dilip Das, R/o village- Jaluguti, Machkhuwa, PS- Morigaon.

On examination, he found the following:

History of assault was at about 5.30 PM, on 11.03.2015, he found 1. lacerated injury on right shoulder, size is about 2 inch x 2 inch, 2. Swelling and tenderness of posterior occipital region of scalp. The size was about 3 inch x 3 inch. Type of weapon was blunt. Nature of injury was simple. The cross-examination of this witness was declined by defence.

(c) PW-3(Sh. Bidyadhar Gogoi) he in his evidence has stated that, on 12.03.2015, he was posted at Morigaon Police Stationas attached S.I. and on that day, the Officer-in-Charge of theirPolice Station received an ejahar lodged by the informant Nitumoni Das and the same was registered as Morigaon PS Case No. 77/2015. Thereafter, he was endorsed to investigate the case. Ext 2 is the said ejahar. As the informant after lodging the ejahar went to her house therefore, on the next day, he visited the house of the informant. He took the informant to the Medical for her examination and after coming from the Medical, he examined her.

He also produced her before the Magistrate to record her statement u/s 164 Cr.PC. On 15.03.2015, he visited the place of occurrence and drew up a sketch map of the place of occurrence. Ext. 3 is the sketch map and Ext. 3(1) is his signature on the same. On 17.03.2015, on being produced a vest of the accused by the mother of the victim at police station, he seized the same. He examined the mother of the victim namely, Taramai Das and the victim girl only. Apart from that, he did not get any other witness to depose evidence. After completion of investigation, he submitted charge sheet u/s 448/376(i)/323 IPC r/w Section 4 of the POCSO Act, against the accused person.

During his cross-examination, he deposed that as per ejahar the informant stated that the alleged incident took place on 11.03.2015, at about 6 PM. However, the ejahar was lodged on 12.03.2015, at about 3 PM. But, he could meet the victim girl on 13.03.2015, when she appeared before the police station at about 10 AM. He immediately arranged medical examination of the victim girl. He did not visit the house of the informant and the victim on the date of filing the ejahar. There is no mention or indication about the exact place of occurrence on the sketch map (Ext 3). He had shown the house of one Mr. Umesh Bonia in his sketch map but he did not record his statement. He denied the suggestion that, he did not record the statement of the victim girl. He recorded the statement of the mother of the victim and the victim girl. He also denied the suggestion that, he examined the case in a perfunctory manner and hehas falsely implicated the accused person.

(d) PW-4 (Dr. Madhusmita Baruah Deka), she in her evidence deposed that, on 13.03.2015, she was serving as M& HO-1 at Morigaon Civil Hospital. On that day, she examined Smti. Nitumoni Das, D/O Dilip Das of village Jaluguti at around 1.45 PM.The victim was accompanied by WHG Purnima Bordoloi and a female attendant. The victim gave brief history that on 11.03.2015, she was raped by one man.

She found one black scar mark on right side of the neck of the victim.

On examination, she found no external injury. Vaginal hymen was present. During examination, she found no spermatozoa in her vaginal smear. As per radiological report, victim's age was found to be 16 to 17 years old.

Opinion:

There was no sign of recent forceful sexual intercourse with her. Ext. 5 is her medical examination report. Ext. 5(1) is her signature. The cross-examination of this witness was declined by defence.

6. In this case, the major lapse of the prosecution is non-appearance of the victim girl, who was stated to be no more in this world as disclosed by her mother PW-1 in her re-examination. It was alleged that the victim was subjected to rape and sexual assault at the hand of the accused person at the relevant point of time of occurrence of the incident. Despite witnessing such incident, the ejahar was lodged on the next day by the victim herself at about 3.00 PM and, thereafter, the victim girl had undergone medical examination the next day of the institution of the case. Hence, the M.O. (PW-4) examined the victim girl after two days of the occurrence of the incident and the M.O. did not find any external injury or any spermatozoapresent in the vaginal smear of the victim girl. By exhibiting the medical examination report, the M.O. opined that there was no sign of recent forceful sexual intercourse with the victim girl.

Now while coming to the discussion of evidence of the mother of the Victim girl i.e. PW-1, it appears that she is the eye witness to the occurrence of the incident, who caught hold of the accused person while the accused was committing rape upon her daughter at her house and when PW-1 restrained the accused person from doing so then a scuffle took place between her and the accused and as a result, she sustained head injury due to blow of a knife on her head made by the accused, for which, she became senseless. PW-1 stated that she regain her senses on the next day at hospital and came to know that some of her neighbors were gathered at the P.O at the time of occurrence of the incident. PW-1 in her cross-examination has stated that there were near about 7 family members near her house namely, Umesh Bania, Reboti Devi, Maloti Das, Maloti Das, Satram Bania etc. But, surprisingly the I.O. did not examine these neighboring witnesses to get corroborating evidence with respect to the facts of the incident. The I.O. of the case failed to examine these neighbors of PW-1. PW-1 during her cross-examination denied the suggestion that she did not state before police that as soon as she went inside her room she caught hold the

accused and tried to lift him from committing rape with her daughter and while doing so she sustained injuries caused by the accused with a knife. PW-1 further denied the suggestions that the accused did not commit rape and also did not assault her by a knife. But, surprisingly, the learned defence counsel while examining the I.O of the case did not testify the veracity of the statement made during suggestion of PW-1. The I.O. of the case had only examined the mother and the victim girl and apart from that he did not found any other witness for evidence. Hence, the I.O failed to examine any other independent witnesses to the occurrence of the incident and thereby cast suspicion on the prosecution case. It appears to me that though the evidence of PW-1 seems to be believable to certain extent but non-examination of any independent witnesses and above all non-examination of the victim girl due to her death are fatal to the prosecution. Hence, by relying on the evidence of PW-1 who is the mother of the victim the accused cannot be held guilty.

7. In view of the above discussion, I have found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused is not found guilty for the offence punishable U/s 448/376/323 of IPC r/w Section 4 of the POCSO Act and as such, he is acquitted on benefit of doubt. Set the accused at liberty. However, his bail bond shall remain extended till next six months.

Judgment is delivered and pronounced in the open Court on this 07th day of October, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1:- Smt. Taramai Das,
- 2. PW-2 :- Dr. Ajit Kr. Phukan,(M.O.)
- 3. PW-3 :- Sh. Bidyadhar Gogoi (I.O.),
- 4. PW-4: Madhusmita Baruah Deka (M.O.)
- B. <u>Defence witness</u>: Nil.

C. Prosecution Exhibit

- 1. Ext. 1 :-the Seizure list
- 2. Ext. 2 :- the Ejahar,
- 3. Ext. 3:- the Sketch Map,
- 4. Ext. 4:- the charge-sheet.
- 5. Ext. 5:- the Medical examination report.
- D. <u>Defence exhibits</u>:- Nil.

Sessions Judge, Morigaon.