

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

CHIRANG, KAJALGAON.

Special (P) Case No. 25(RKT)/2017

U/S 341/354A/323/506 IPC R/W Section 8 of POCSO Act.

State of Assam

Vs.

Sri Promod BasumataryAccused

PRESENT :

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Public Prosecutor

For the accused

: Sri B.K. Dey, Advocate

Date of evidence

: 22.02.18, 22.03.18, 05.04.18,

19.04.18

Date of Argument

: 17.05.2018

Date of Judgment

: 17.05.2018

JUDGMENT AND ORDER

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- 1. The prosecution case in brief is that on 02.09.2017, the accused Promod Basumatary restrained the 16 years old daughter of the informant by holding her hand with ill motive while she was returning from her college. On her resistance, the accused assaulted her by holding her neck and hair but the victim somehow managed to escape from the hand of the accused. It is further alleged that accused threatened the victim by telling her not to disclose the incident to anybody otherwise she would be killed.
- 2. The matter was informed to the O/C, Runikhata Police Station who accordingly registered a case being Runikhata P.S. Case No. 27/2017 U/S 341/354(A)(I)/323/506 IPC read with Section 12 of POCSO Act and the O/C himself investigated the case. Accordingly, he arrested the accused, visited the

place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC and after completion of investigation, submitted charge-sheet against the accused Promod Basumatary U/S 341/354(A)/323/506 IPC read with Section 4 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused was produced before the court from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, my learned predecessor framed charge U/S 341/354A/323/506 IPC read with Section 8 of POCSO Act against the accused. Charge was read over and explained to the accused to which he denied to plead guilty.

- 3. In support of the case prosecution side examined as many as 8 (eight) witnesses including the I.O.
- 4. Following witnesses are examined:-
 - (1) Sri Septison Narzary as PW 1
 - (2) Sri Renjen Basumatary as PW 2
 - (3) Victim as PW 3
 - (4) Sri Lojit Basumatary as PW 4
 - (5) Smt. Nilima Narzary as PW 5
 - (6) Smt. Rinti Narzary as PW 6
 - (7) Smt. Khoki Basumatary as PW 7
 - (8) Sri Monoj Narzary as PW 8 (I.O.)

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- 5. FIR was exhibited as Ext. 1. Seizure list was exhibited as Ext.2. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext. 3. Sketch map was exhibited as Ext.4 and charge-sheet was exhibited as Ext.5
- 6. Defence plea is of total denial. Defence adduced no evidence.
- 7. Heard argument from both sides.
- 8. Now points for consideration:-

1. Whether on 02.09.2017 at about 4:00 P.M. at Udalguri under Runikhata P.S., the accused wrongfully restrained the victim, the daughter of the informant, while she was coming from her college towards home?

For the offence U/S 354A of IPC

2. Whether on the said date, time and place, the accused committed sexual harassment on the victim by physical contact and advances involving unwelcome and explicitly sexual overtures against her will?

For the offence U/S 323 of IPC

3. Whether on the said date, time and place, the accused voluntarily caused simple injury by blunt object to the victim?

For the offence U/S 506 of IPC

4. Whether on the said date, time and place, the accused committed criminal intimidation by threatening the victim with injury to her person?

For the offence U/S 8 of POCSO Act

5. Whether on the said date, time and place, the accused committed sexual assault on the victim (A minor girl under the age of 18 years)?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned all points simultaneously for the sake of convenience.
- 10. I have already mentioned that in support of the case, prosecution side examined as many as eight witnesses including the I.O.

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- 11. Victim girl was examined as PW 3. She deposed that on 02.09.17 at about 4.00 pm, she was returning from her college. The accused had hidden himself in a jungle and he obstructed her way. After that he asked her to get up on his bicycle. Accordingly, he took her on his bicycle. At that time, accused was in drunken state. When the PW 3 declined to get up on bicycle, the accused caught her hair and gave blow. At that moment, few children came to the spot and accused drove them. After that one old man also came to the spot. Then accused fled away and victim came along with the said old man. During cross-examination, PW 1 stated that she was not taken in bicycle of the accused. It is stated by victim that on the way, she met her mother and reported the entire incident. The victim during the time of investigation gave statement U/S 164 CrPC before the Magistrate which is also exhibited in this case. According to her statement U/S 164 CrPC, she had not stated that she was taken by accused on his bicycle. According to the victim, at that moment, accused tried to take her on his bicycle but he could not do it because victim protested. She was then attacked by the accused and gave blow with his leg and hand.
- 12. The mother of the victim who was examined as PW 5 deposed that on the date of occurrence i.e. on 02.09.2017 at about 4.30 pm, he daughter was coming from her school in weeping condition. She asked her about the reason of her weeping. Then victim reported her that one boy had beaten her. He was in drunken state and tried to take the victim in his bicycle. He also caught her hand and forcefully tried to take her on his bicycle but he could not do that. According to PW 5, except this, nothing was happened.
- 13. PW 1 is the father of the victim who lodged the FIR. He deposed that occurrence took place on 02.09.17 at about 4.00 pm. On that day, his daughter went to her college and after returning, she reported that on the way, a boy obstructed her and tried to take her to nearby jungle. He also beat her. According to PW 1, victim reported him that accused tried to commit sexual intercourse with her but she denied for which he beat her. He also knew from the victim that some children witnessed the occurrence and one elderly person came to the spot. After his presence, accused fled away and victim came with him. Interestingly, said children were not examined.

Shecrar Kalaldaus Racas Elderly person, who was present on the spot, was also not examined by the prosecution. According to PW 1, at that time his daughter was reading in H.S. 1^{st} year.

- 14. PW 2 deposed that at the time of occurrence, informant reported him that accused tried to molest his daughter nearby jungle when she was returning from her college. The villagers caught the boy after the incident. On next day, matter was informed to nearby police station. Police came to the spot and arrested the accused. This witness did not witness the occurrence directly.
- 15. PW 4 also did not witness the occurrence. He heard from the informant about the incident. This witness only stated that age of the victim was about 16 years at the time of occurrence. During cross-examination, he deposed that from the victim, he heard about the incident.
- 16. PW 6 Smt. Rinti Narzary and PW 7 Smt. Khoki Basumatary deposed that they noticed the victim in weeping condition. They asked her about the reason but she did not tell anything.
- 17. PW 8 is the Investigating Officer. According to him, on 03.09.17 he was working as Officer-in-Charge of Runikhata P.S. One Septison Narzary lodged an FIR and accordingly, a case was registered being numbered as Runikhata P.S. Case No. 341/354(A)/323/506 IPC read with Section 12 of POCSO Act. After taking the charge of investigation, he recorded the statement of different witnesses and collected school certificate of the victim girl. She was medically examined. He also recorded her statement, visited the place of occurrence and drew sketch map. According to PW 8, place of occurrence was a road in between Odalguri village and Laimati. Bicycle was not seized. He did not investigate about the bicycle. Accused was arrested at police station when he was handed over by villagers. Statement of the victim was recorded U/S 164 CrPC. It is found from his deposition that FIR was lodged on 03.09.17 but occurrence took place on 02.09.17. According to witnesses, accused was caught by villagers and kept in a club on that fateful night. On next day, FIR was lodged.

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- 18. I have gone through the statement of the victim recorded $\ensuremath{\text{U/S}}$ 164 CrPC. In her statement, victim stated that accused only tried to take her in his bicycle but could not do that. He followed her when she was returning from her college. He obstructed her on the way. According to victim, he used force and caught her hand but it is not proved that she was taken by the accused in his bicycle. Interestingly, bicycle was also not seized by police. The Investigating Officer failed to find whereabouts of the bicycle. Not a single witness stated that bicycle was seized by police or it was taken in such and such place. Therefore, deposition given by the victim that she was taken in a bicycle by the accused is not believable. All other witnesses heard about the incident from the victim. According to victim, one elderly person was present but he was not examined by the Investigating Officer or prosecution. The mother of the victim stated that accused tried to take the victim in his bicycle for which he used criminal force and he caught her hand. Except this, nothing was happened as stated by the mother of the victim to whom victim had reported the matter after the incident.
- 19. Learned defence counsel pointed out that the prosecution miserably failed to prove the allegation leveled against the accused. The age of the victim was also not proved during the time of investigation or trial. No any certificate was exhibited in this regard.
- 20. According to PW 4, age of the victim was about 16 years. Victim stated that she is a student of Class XII. According to the informant, the victim was reading in H.S. 1st year. So, from entire evidence, it is found that age of the victim was not above 18 years but below 18 years. She was minor at the time of occurrence.
- 21. Now, I come to the alleged offence. Charge was framed U/S 8 of POCSO Act which is a punishment section regarding sexual assault. Sexual assault is defined in Section 7 as follows:
 - "7. Sexual Assault.— Whoever, 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

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does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

- 22. In the present case at hand, ingredients of Section 7 is not proved. Therefore, accused cannot be booked for the offence U/S 8 of POCSO Act.
- 23. It is found from the entire evidence on record that accused obstructed the victim and used criminal force. So, section 341/323 IPC are proved against the accused beyond all reasonable doubt. Though charge was framed U/S 354A IPC regarding sexual harassment but it is not proved against the accused beyond all reasonable doubt. No specific evidence is found regarding sexual harassment defined U/S 354A IPC.
- 24. Section 354 A IPC runs as follows:-

"354A. Sexual harassment and punishment for sexual harassment: (1) A man committing any of the following acts:

- physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. a demand or request for sexual favours; or
- iii. showing pornography against the will of a woman; or
- iv. making sexually coloured remarks,

shall be guilty of the offence of sexual harassment."

25. From the entire evidence on record, the ingredients of Section 354A IPC is lacking. Therefore, accused cannot be booked for the offence U/S 354A IPC. On the other hand, it is found that accused followed the victim when she was returning from the college and attempted to contact with her and with foster personal interaction repeatedly. Therefore, Section 354D IPC is found to be proved against the accused. The offence of stalking is defined U/S 354D IPC as follows:

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"354D. Stalking: (1) Any man who:

- follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking."

26. In the present case at hand, the victim clearly stated that accused at first followed her. After that he caught her hand and tried to take her in his bicycle. From this conduct of the accused, it is proved that he followed the victim and contacted her to foster personal interaction repeatedly despite a clear indication of disinterest by the victim. So, prosecution failed to establish the case U/S 354A IPC but established the case U/S 354D IPC. Therefore, point number 2, 4 and 5 are not proved instead of which prosecution proved the case U/S 341/323/354D IPC against the accused beyond all reasonable doubt.

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ORDER

- 27. Prosecution failed to prove the case U/S 8 of POCSO Act against the accused. Accused is acquitted from said offence. On the other hand, prosecution also failed to prove the case U/S 354(A) IPC instead of which prosecution proved the case U/S 354(D) IPC against the accused beyond all reasonable doubt. Prosecution further proved the case U/S 341/323 IPC against the accused beyond all reasonable doubt. Prosecution further failed to prove the case U/S 506 IPC against the accused. Accused is convicted U/S 341/323/354(D) IPC. Accused is acquitted from the offence U/S 8 of POCSO Act read with Section 354(A)/506 IPC.
- 28. Considering the nature of offence, I have not applied Section 3/4 of Probation of Offenders Act or Section 360 CrPC because accused taking

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the chance of loneliness, tried to harass the victim and used criminal force and

followed her with an evil intention. If this kind of person is allowed to be scot-

free, it will create chaos in the society.

29. Accused is sentenced to undergo 1 (one) month S.I. for the

offence U/S 341 IPC and undergo 3 (three) months S.I. for the offence U/S

323 IPC. He is further sentenced to undergo 8 (eight) months S.I. for the

offence U/S 354(D) IPC and to pay a fine of Rs. 2,000/- (Rupees Two

Thousand), in default, another 1 (one) months S.I. All these sentences will be

run concurrently.

30. Accused has been languishing in jail since 04.09.2017. The

entire period will be set off from the sentenced period according to Section

428 CrPC.

31. A copy of the Judgment shall be given to the accused on free

of cost. Another copy of the judgment shall be given to the District Magistrate,

Chirang and Superintendent of District Jail, Kokrajhar for information and

taking necessary action.

32. Given under my sign and seal of this Court on this the 17th day

of May, 2018, at Kajalgaon, Chirang.

Dibyes yok Mahanga (B.J. Mahanta)

Chirang.

Dictated and corrected by me,

(D.J. Mahanta) Special Judge,

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<u>APPENDIX</u>

Prosecution witness:

PW 1 - Sri Septison Narzary

PW 2 – Sri Renjen Basumatary

PW 3 - Victim

PW 4 - Sri Lojit Basumatary

PW 5 – Smt. Nilima Narzary

PW 6 - Smt. Rinti Narzary

PW 7 - Smt. Khoki Basumatary

PW 8 - Sri Monoj Narzary (I.O.)

Exhibit (Prosecution):

Ext-1 FIR

Ext-2 Seizure list

Ext-3 Statement of the victim U/S 164 Cr.P.C.

Ext-4 Sketch map

Ext-5 Charge-sheet

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta) Special Judge, Chirandudge

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