CAUSE TITLE POCSO Case No. 3/16

Informant: 'Y'.

Accused: Sri Dhumba Bhumij @ Biswanath Bhumij,

R/o- Kasuwani Pather Gaon,

PS- Rahmaria, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor;

Mrs. Sahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Sri MP Todi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 3/16 G.R. Case No. 3220/15

> > State of Assam

-Vs-

Sri Dhumba Bhumij @ Biswanath Bhumij

Charges: Under Section 4 of the PCSO Act.

Date of evidence on : 18-03-16, 18-05-16, 16-06-16 and 10-04-17.

Date of argument : 19-01-18. Date of Judgment : 21-06-19.

JUDGMENT

- 1) The prosecution case in a narrow compass is that Sri Dhumba Bhumij @ Biswanath Bhumij (hereinafter the accused person) kidnapped the victim 'X' on 30-11-15 at about 5:00 pm from her house and hid her in his own house. The victim's parents frantically searched for her and they confronted the accused and at about 8:00 pm, the victim was brought out of the accused person's house. When the victim was brought back, she informed her family members that the accused committed rape on her. An ejahar regarding this incident was lodged by the victim's father 'Y' which was registered as Rahmaria PS Case No. 51/15 under Section 376 of the Indian Penal Code (IPC for short), read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).
- 2) The investigation officer (IO for short) embarked upon the investigation. He went to the place of occurrence and recorded the statements of the witnesses. He recorded the statement of the victim and forwarded her to the

Magistrate who recorded her statement under Section 164 of the Code of Criminal Procedure (CrPC for short). The victim was also forwarded to the medical officer (MO in short) for medical examination. On finding prima facie materials against the accused person, the IO submitted Charge-Sheet against the accused under Sections 376 IPC, read with Section 4 POCSO Act.

- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 4 POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of eight witnesses including the MO and the IO. On the inculpatory circumstances arising against him, the tone and tenor of the accused person to the questions under Section 313(1)(b) CrPC depicts a plea of total denial.

Submissions:

5) The learned Public Prosecutor Smt. Runumi Devi and the learned Additional Public Prosecutor Mrs. Sahnaz Akhtar laid stress in their arguments that this is an open and shut case and the accused deserves stringent punishment. On the contrary, the learned defence counsel laid stress in his argument that the victim's father has not lodged the FIR. The ejahar is contradictory to the evidence. According to the cross-examination of PW-1, she worked for two years in the garden. It is also submitted that the cross-examination of the victim's mother depicts that the victim was not a minor, but she was a major, above 18/19 years.

Points for determination:

- 6) The following point is sufficient to adjudicate this case:
 - i. Whether the accused committed penetrative sexual

assault on the victim 'X'?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 7) The victim 'X' testified as PW-1 that the accused is her neighbour. The incident occurred about two years ago. On the relevant evening, at about 5:00 pm, she went out to the nearby jungle from the house to bring back the cattle that were grazing in the jungle. When she untied the rope, the accused came from behind and gagged her by her mouth and forcefully took her towards the jungle. She tried to scream, but failed, as her mouth was covered. Then the accused committed rape on her by removing her clothes. She did not sustain any injury. The accused again put on her clothes and took her to his house and kept her in the room inside his house. She met the accused person's wife. The accused kept her in his house stating that he will marry her and so he went to their house and informed her mother that he had kept her in his house. Her mother refused and assaulted the accused with a stick. Then the accused brought her back from his house to her house. She informed her mother about the incident and her mother informed her father about the incident. On the following day, she went to the Rahmaria Police Station and her father lodged an FIR with the police. The police took her to the Assam Medical College & Hospital at Dibrugarh. She was also forwarded to the Court for recording her statement.
- 8) In her cross-examination, she testified that she is a temporary worker of Dhalajan Tea Estate and has been working in the garden for the last two years. She did know her age and she could not say if her present age is 20 years. She testified in her cross-examination that the accused did not commit sexual intercourse in his house. When the accused took him to his house, he found his wife, his bother, his two minor children and parents in his house.

He told his family members that he would marry her. She remained in his house for 4/5 hours. She did not raise alarm in his house. She was kept in his prayer room. The accused also informed her mother that he had kept her in his house, but her mother refused his proposal. When her mother refused his proposal to marry her, the accused took her back from his house to her house and handed her over to her mother. She further testified in her crossexamination that her father agreed to withdraw this case, but some villagers advised him against it. She has admitted in her cross-examination that she voluntarily went with the accused when he proposed to marry her.

- 9) The evidence of the victim clearly depicts that she stayed in the accused person's house, expecting that she will be allowed to marry him. She stayed there for 4/5 hours and when her mother refused the accused person's proposal, the accused brought her back to her house. The accused was already a married person. The evidence of PW-1 does not inspire confidence. It is clear that she had consensual physical relationship with the accused person. She tried to clear her image by shifting the burden to the accused person. Her conduct reveals that despite knowing that the accused is a married man, she tried to impose herself into his house and acted as a home breaker.
- 10) 'Y' testified as PW-2 that the accused person is his neighbour and the victim 'X' is his daughter who is about 15 years of age. The incident occurred about three months back (from 18-03-16). On the relevant evening, when he reached home about 7:00 pm, his wife informed him that the accused dragged his daughter 'X' to the nearby jungle when she went out to bring back cattle from the jungle. After a frantic search, his wife found his daughter in the jungle. After ten minutes, when his wife reached home with his

daughter and when his daughter was confronted, 'X' told them that she was dragged away. His wife told him that she found their daughter in the jungle. 'X' told them that the accused person gagged her and dragged her away and committed rape on her in the jungle. On the next morning, he informed his neighbour about the incident and his neighbour advised him to go to Rahmaria Police Station. Then his wife, his daughter and he went to the police station.

- 11) The informant is not an eye-witness. He heard from his wife and daughter about the incident. His wife found his daughter in the jungle, while his daughter testified as PW-1 that the accused brought her back to her house. The evidence of PW-1 is not found to be reliable and this contradiction also belies her evidence.
- 12) He further testified in his cross-examination that no minors are allowed to work in the tea garden.
- 13) It has already been held in my foregoing discussions, that the evidence of PW-1 does not inspire confidence and the contradiction apparent in the evidence of PWs-1 and 2 casts a shadow of doubt over the veracity of their evidence. The victim testified in her cross-examination that she cannot say if she is above 20 years. It is clear from the evidence of PWs-1 and 2 that the victim is a tea garden worker which indicates that the victim is not a minor.
- 14) 'Z' testified as PW-3 that the accused is his neighbour. The incident occurred about three months ago. On the day of incident, she was in her house and 'X' went to the jungle. As 'X' did not return, she searched for her daughter and went to the accused person's house twice. The accused and his wife denied that her daughter was in his house and the accused stated that he will search for 'X', but she (PW-3) did not believe him and caned him twice with a stick.

Meanwhile, the other people learnt about their missing daughter. They went to the accused person's house and recovered 'X' from the Pooja room and they handed over 'X' to her. On being confronted, 'X' informed her that she went to being back the cattle and the accused dragged her to the jungle and forcefully committed rape on her and then took her to his house. Then she went to Lakhiram's house and informed him about the incident. He wrote an ejahar according to her daughter's narrative. Then she along with her daughter went to Rahmaria Police Station.

- 15) PW-1 testified that the accused person brought her back from his house to her house, while, on the contrary, PW-3 testified that the local villagers brought 'X' back from the accused person's house to her house. As the witnesses are not truthful, so this case is replete with contradictions. The ejahar contains 'Y's name, while 'Z' testified that Lakhiram wrote the ejahar for her and then she and her daughter went to the police station and lodged the ejahar. It is not clear who lodged the ejahar with the police. PW-3 also admitted in her cross-examination that she could not recall her daughter's date of birth and her daughter was working at Dholajan Tea Estate for the last two years.
- 16) Sri Nipen Tanti testified as PW-4 that about five months ago, a meeting was convened in Oakland. He came to know that 'Y's daughter had physical relationship with the accused person and so the meeting was held. He also learnt that both the parties settled their dispute.
- 17) Thus, truth prevails. It is clear from the evidence of PW-4 that 'X' had consensual sex with the accused person.
- 18) Sri Pradip Karmakar testified as PW-5 that the incident occurred about four months ago. On the 2nd day of the incident, 'X's father held a meeting in the

- house of Rupa Bhumij, but no decision was taken in the meeting. So 'X' lodged the ejahar.
- 19) The evidence of PW-5 also does not implicate that the accused is complicit.
- 20) In view of my foregoing discussions, it is held that the evidence of PW-1 does not inspire confidence. She was terrified of her mother and so she voluntarily implicated the accused to save her skin.
- 21) The IO Sri Kateswar Sharma testified as PW-6 that on 14-11-15, he was the 2nd Officer at Rahmaria Police Station. On that day, he received an FIR from 'Y' and registered Rahmaria PS Case No. 51/15 under Section 376 IPC, read with Section 4 POCSO Act and he embarked upon the investigation. After completion of investigation, he submitted Charge-Sheet against the accused Ext. 3 wherein Ext. 3(1) is his signature. Ext. 1 is the FIR and Ext. 1(1) is his signature. Ext. 2 is the Sketch-Map and Ext. 2(1) is his signature.
- 22) The cross-examination of the IO depicts that 'X' did not state before him that the accused took her to the jungle and undressed her and committed rape on her in the jungle.
- 23) Thus, it is clear that the victim's testimony in the Court is contradictory to her testimony under Section 16a CrPC. She has not implicated the accused under Section 161 CrPC, but she has come out with new facts in the Court. Her mother also omitted to state under Section 161 CrPC that the accused committed rape on her daughter in his house. These are the major contradictions which exonerates the accused person.
- 24) Smti. Priyanka Hazarika Nair is a Judicial Magistrate who recorded the statement of the victim under Section 164 CrPC. She testified as PW-7 that on 16-11-15, while working as Judicial Magistrate at Dibrugarh, she recorded the statement of the victim 'X'. Ext. 2 is her statement and Ext. 2(2) is her

- signature. The victim's statement was recorded in connection with this case.
- 25) The statement of the victim under Section 164 CrPC is similar to her testimony in the Court, but it has already been held in my foregoing discussions that the victim's evidence is not found to be reliable.
- 26) The MO's evidence depicts that no evidence of sexual intercourse could be detected on examination of the victim. Dr. Mohsina Ahmed testified as PW-8 that on 15-11-15, she examined the victim in connection with this case and found the following:
 - i. Actual age of the victim is above 14 years and below 16 years;
 - ii. There is no evidence of recent sexual intercourse on her person;
 - iii. There is no recent injury on her person;
 - iv. There is evidence of pregnancy on her person.

In column 20(c), it is mentioned that there are old tears at 3, 5 and 7 O' position which suggests that the victim 'X' has past history of sexual penetration.

Ext. 13 is the Medico-legal Report and Ext. 3(1) upto Ext. 3(3) are the signatures of the MO.

- 27) No injuries were detected on her person, but the victim was pregnant.
- 28) Thus, it is clear that the victim indulged in consensual sexual intercourse with the accused. She was terrified, because she was pregnant and so she shifted the entire blame on the accused. She was also eager to marry to the accused person, despite the fact that he was already a married man, but when her mother was infuriated by the accused person's proposal, she shifted the burden on the accused person to save her own skin.

29) I would like to reiterate that the evidence of the victim does not inspire

confidence. Two years on the higher side of the victim's age is stretched to

extend the benefit of doubt to the accused person. The victim is held to be

above 18 years. The MO has opined that the victim was above 14 years and

below 16 years. After adding two years on the higher side, it is held that the

victim was around 18 years of age and she willingly had sexual intercourse

with the accused person on her own consent.

30) It is thereby held that the prosecution failed to prove beyond reasonable

doubt that the accused committed offence under Section 4 of the PCSO Act

and thereby, the accused Sri Dhumba Bhumij @ Biswanath Bhumij is

acquitted from the charges under Section 4 POCSO Act on benefit of doubt

and is set at liberty forthwith.

31) Bail bond stands cancelled.

32) The victim does not deserve compensation.

Judgment is signed, sealed and delivered in the open Court on the 21st day of

June, 2019.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX POCSO Case No. 3/16

List of witnesses:

- 1. PW-1 The victim 'X';
- 2. PW-2 The informant;
- 3. PW-3 The mother of the victim;
- 4. PW-4 Sri Nipen Tanti;
- 5. PW-5 Sri Pradip Karmakar;
- 6. PW-6 Sri Kateswar Sharma;
- 7. PW-7 Smti. Priyanka Hazarika Nair; and
- 8. PW-8 Dr. Mohsina Ahmed.

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.