### IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

**SPECIAL (POCSO) CASE NO.** :- <u>32 OF 2018</u>

(Under Section 4 of the POCSO Act, arising out of G.R. Case No. 1379 of

2018)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

**Tezpur** 

Prosecutor :- State of Assam

-vs-

Accused :- Sri Samir Ch. Adhikary

Son of Late Ashim Ch. Adhikary Resident of Pandu Maligaon Police Station – Jalukbari Dist:- Kamrup (Metro), Assam

Date of framing Charge :- 28-05-2018

Date of Recording Evidence :- 11-06-2018 & 04-07-2018

Date of examination of accused u/s

313 Cr.P.C

- 04-07-2018

Date of Argument :- 04-07-2018

Date of Judgment :- 04-07-2018

Counsel for the Prosecution :- Mr. Munin Ch. Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. P. Biswas, Advocate.

#### **JUDGMENT**

**1.** In this case accused Sri Samir Chandra Adhikary is put for trial for allegation of charge under Section 4 of the POCSO Act, 2012.

2. The factual matrix according to the FIR in brief is that on or about 2.30 p.m. of 05-04-2018 informant's 16 years old minor daughter while returned from her friend's house on the road near Batasipur Railway station, accused

forcibly dragged her by gagging her mouth to his room and committed rape on her minor daughter. It is also stated in the ejahar that the accused Samir Adhikary also threatened to kill her minor daughter if she disclosed the matter to anybody. Hence, this prosecution case. The ejahar was filed by complainant Smti Minoti Mushahary on 11-04-2018 before the O/C Dhekiajuli Police station.

- **3.** On receipt of the aforementioned FIR, the Officer-In-Charge of Dhekiajuli Police Station registered a case being Dhekiajuli P.S. Case No. 271/2018 u/s 4/6 of POCSO Act. After completion of usual investigation, the O/C Dhekiajuli Police Station filed charge sheet under section 4/6 of the POCSO Act against the accused Sri Samir Chandra Adhikary.
- **4.** On being appeared the accused before this Court, after hearing both parties, charge u/s 4 of POCSO Act, 2012 was framed against the accused Sri Samir Chandra Adhikary and particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution has examined four numbers of witnesses. Learned counsel for the accused submitted to close the evidence on the ground that the complainant and victim and other witnesses no way supported the prosecution case, so it would be futile to examine the other witnesses. I have heard the learned Special Public Prosecutor. On perusal of the statement of the victim, the complainant and other witnesses, it appears that they were no way supported the prosecution case, therefore, I think that prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed. Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.
- **6.** I have heard the argument put forward by the learned counsels of both sides.

- **7.** The point for decision in this case is that -
  - (1) "Whether on or about 2.30 p.m. of 05-04-2018 at Batasipur under Dhekiajuli Police station, the accused committed penetrative sexual assault on "Miss X" (victim) and thereby committed an offence punishable under section 4 of the Protection of Child from Sexual Offences Act?

### Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **9.** PW 1 Sri Pailot Goyari stated that he knows the accused as Mr. Adhikary. He is the railway ticket Master. The incident took place on 05-04-2018 at about 2.30 p.m. He knows the victim Lalita Mushahary who is aged about 16 years. When he went to the Dhekiajuli Railway station he saw a girl namely Lalita Mushahary ran away from the railway quarter of accused. Then he asked the said girl what happened, she told me crying that she went to the house of the accused to see the pet dog of the accused, then accused dragged her inside his room by gagging her mouth. The accused committed rape on her by opening her pant. The accused also threatened her. Then he informed the matter to local AABSU. Thereafter, the said girl left the place.

In cross-examination he stated that he does not know the tenure of posting of accused at Dhekiajuli Railway station. He knows the accused for last 6 months. He has a beauty Parlor at Dhekiajuli railway station. There are many shops and other business establishment within the vicinity of said railway station. There is only one platform in the said railway station. There are three roads connected in the said railway station. All the shops and establishments facing towards road i.e. back side of the railway station. During that time there are customers in his parlour. In his parlour his brother also worked. Besides his parlour there is one medicine shop. The room of the ticket master is adjacent to the Station. The distance between the house of the victim girl and the room of the ticket master is about half km. His shop is behind the railway platform. He cannot say whether the pet dog of the accused was available in his room on that day or not. Usually through the Dhekiajuli railway station from morning to

5 p.m. 5 numbers of trains were moving. Usually at about 2.30/3 p.m. there was one train passing through the Dhekiajuli railway station. He does not know how many staff is posted at Dhekiajuli railway station. I saw the girl when she ran away from the room of the accused. I have just crossed Sumit when the said girl was coming out from the room of the accused. At the time of incident there was no train in the Dhekiajuli railway station. He does not know who was posted at Ticket counter. fter about some days he informed the matter to AABSU. He cannot exactly recall after how many days he informed the matter to AABSU.

**10.** PW 2, Sri Sumit Swargiary, who stated that he knows the accused who is a railway ticket Master. The incident took place a few days before Bohag Bihu at about 2.30 p.m. He knows the victim Lalita Mushahary who is aged about 16/17 years. At the relevant time he saw victim Lalita Mushahary come out from the room of the accused by crying. Then he asked the said girl what happened, she told by crying that when she went to the house of the accused to see the doggy of the accused, then accused dragged her inside his room by gagging her mouth. The accused committed rape on her by opening her pant. Thereafter, the said girl went to her house. At the relevant time, Pilot Goyari was also with him.

In Cross-examination he stated that he resides near the Railway station. His house is about 5 km distance from the house of Pailot Goyari. He knows the quarter where accused resides. His quarter is at a little distance from the ticket counter. There were other quarters situated at the back side of the accused's quarter. Accused's quarter is front side of the other quarters. He went to bring strings of guitar to Dhekiajuli town along Piolot Goyari. There were no train in the station at the relevant time. At 2.30 p.m. a train was going towards to Rangapara. Bus station is adjacent to the Railway station. His house is situated near the station. He just met Pilot in the railway station. After hearing about the incident from Lalita he along with Pilot went to the house of the accused. They also went to the house of Lalita to meet her mother.

**11. PW 3** Smti Minoti Mushahary, who is the complainant of this case and mother of the victim, stated that she knows the accused Samir Adhikary. The

incident took place about 3/ 4 months ago at about 3.30 p.m. Victim is her daughter. Her victim daughter was aged about 19 years. Though in the ejahar she has mentioned her age as 16 years, but actually her age was 19 years. The ejahar was written by one lady scribe who resides near Dhekiajuli Police station. She has filed this ejahar as because some unknown person came to them, threatened her to file a case against the accused. Police recorded her statement. Police has also recorded the statement of her victim daughter; she was also sent to the learned court for recording her statement and sent to the hospital for medical examination. Then the victim girl was given custody to her. Her victim daughter did not state anything about the incident. In the ejahar, she put thumb impression.

In Cross-examination this witness stated that she does not want to proceed the case further. She has no objection even if the accused is enlarged on acquittal.

PW 4, the victim Miss "X", stated that she knows the accused Samir 12. Adhikary. The incident took place about 3/4 months ago at about 3.30/4 p.m. She went to the house of her friend Maina Basumatary who resides near their house. When she returned from the house of Maina Basumatary she saw a dog in the house of the accused. She just saw the dog, during that time accused came and asked her where she has been to. She replied that she went to her friend's house. She knows the accused prior to the said incident. While she was talked with the accused person, a few persons came to the place of occurrence and asked her if anything happened. Then she replied that she just talked with the accused as she knows him. Then she came to the home by crying. Then she reported the matter to her mother. Then her mother filed this case against the accused. Police came and recorded her statement. Then she has been sent to TMCH for medical examination. Ext. 1 medical report and Ext. 1(1) is her signature. Then she was taken to the learned Magistrate for recording her statement. Ext. 2 is her statement u/s 164 Cr.P.C. and Ext. 2(1) and 2(2) are her signatures. During investigation police seized her birth certificate. She made statement before the learned Magistrate as per dictation of some persons. Prior to about three years, she has been dropped out from school. At the time of leaving the school, she was in class VI, prior to that period, she has been failed two times in school.

In cross-examination, she admitted that she has made statement before the I.O. and before the learned Magistrate as per dictation of some other persons. She does not know the name of said persons. She knows the accused persons for last 7/8 years. The accused never misbehaved her in any time. He considered her as his own sister and she has also regarding him as his own brother. She has no objection if the accused is enlarged on acquittal. She has no any allegation against the accused.

- **13.** These much is the evidence of the prosecution.
- **14.** Here in this case since the case is charged u/s 4 of POCSO Act, so the most trust-worthy evidence in this case is the statement of the victim.
- **15.** To prove the charge under section 4 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 3 of the POCSO Act.

Section 3 of the POCSO Act quoted as follows:

<u>Section 3. Penetrative Sexual assault,</u> - A person is said to commit "pemetrative sexual assault" if -

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body o the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- **16.** In the present case, neither the complainant nor the victim supported the prosecution case. The statement of the complainant and victim no way reveals any ingredients as stated above. The victim stated that at the relevant

day at about 3.30/4 p.m. the victim went to the house of her friend Maina Basumatary who resides near her house when she returned from the house of Maina Basumatary she saw a dog in the house of the accused, on being asked she replied that she went to her friend's house. She knows the accused prior to the said incident. While she was talked with the accused person, a few persons came to the place of occurrence and asked her if anything happened. Then she replied that she just talked with the accused as she knows him. Then she came to the home by crying. Then she reported the matter to her mother. Then her mother filed this case against the accused. Police came and recorded her statement. Then she has been sent to TMCH for medical examination. Ext. 1 medical report and Ext. 1(1) is her signature. Then she was taken to the learned Magistrate for recording her statement. Ext. 2 is her statement u/s 164 Cr.P.C. and Ext. 2(1) and 2(2) are her signatures. During investigation police seized her birth certificate. She made statement before the learned Magistrate as per dictation of some persons. Prior to about three years, she has been dropped out from school. At the time of leaving the school, she was in class VI, prior to that period, she has been failed two times in school. In crossexamination, she admitted that she has made statement before the I.O. and before the learned Magistrate as per dictation of some other persons. She does not know the name of said persons. She knows the accused persons for last 7/8 years. The accused never misbehaved her in any time. He considered her as his own sister and she has also regarding him as his own brother. She has no objection if the accused is enlarged on acquittal. She has no any allegation against the accused. Similarly, PW 3, the mother of the victim has stated that she has filed this case against the accused person as some unknown persons threatened her to file the case. She has also stated that she has no objection even if the accused is enlarged on acquittal and she does not want to proceed with the case further.

In the case like section 4 of POCSO Act, the victim is the star witness. When the victim gives goodbye to the prosecution case, it will be redundant to discuss the other evidence of the witnesses. Here in this case as stated above, the victim failed to reveal any materials against the accused.

- **17.** Under such circumstances, I have no hesitation to hold that the prosecution has failed to prove the charge levelled against the accused beyond any reasonable doubt. Therefore, I acquit the accused Sri Samir Chandra Adhikary and set him at liberty.
- **18.** The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the  $4^{\text{th}}$  day of July, 2018.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR.

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

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# **APPENDIX**

## **Prosecution Witness**

1. Prosecution Witness No.1 :- Sri Pailot Goyari

2. Prosecution Witness No.2 :- Sri Sumit Swargiary

3. Prosecution Witness No.3 :- Smti Minoti Mushahary

4. Prosecution Witness No.4 :- Victim.

## **Exhibits**

Ext. 1 : Medical Report.

Ext. 2 : statement of the victim u/s 164 Cr.P.C.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

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