

IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
 Sessions Judge,
 Dhemaji,

JUDGMENT IN SPECIAL CASE NO. 7(DH) 2016 (POCSO)

(G.R. Case No.119/2016 ; Silapathar P.S. Case No.36/2016 Under Sections 376 (1)
 of the Indian Penal Code Read With Sec. 6 of POCSO Act)

The State of Assam

- Versus -

Shri Tinku Magor @ Kaita,
 S/O Gomon Mogor,
 R/O No.1 Khanamukh,
 P.S. Silapathar,
 Dist.- Dhemaji.Accused Persons

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 Dhemaji.

Committing Magistrate:- Shri P.C. Kalita,
 Chief Judicial Magistrate,
 Dhemaji.

Appearance:

Shri A. Fogla,
 Public ProsecutorFor the State
Shri K.C. Sonowal, Advocate ,For the Accused

**Dates of prosecution evidence : 11-05-2017, 06-07-2017,
03-08-2017, 31-08-2017,
25-09-2017, 20-10-2017,**

Date of arguments	: 25-01-2018, 08-02-2018
Date of Judgment	: 20-02-2018.

JUDGMENT

1. **Accused- Tinku Mogor @ Kaita** stands charged u/s 4 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act).
2. The prosecution case in brief is that on 11-2-2016 complainant- Smti- Kunti Subba W/O Shri Mohan Subba, R/O VIII.- Sila Gutung, P.S. Silapathar, District- Dhemaji lodged an ejahar with Silapathar Police Station alleging interalia that on 10-2-2016 at about 12 P.M. while her minor daughter Simi (real name concealed) was playing in the field near her house, accused Tinku Mogor induced her and took her in to a bamboo grove and forcibly committed rape on her. It is also stated in the ejahar that one Smt. Nani Das while going to fetch her goats saw the occurrence and rescued the victim girl. Hence, the case.
3. On receipt of the ejahar police registered a case vide Silapathar P.S. Case No.36/2016 u/s 376 (1) of I.P.C. read with section 6 of POCSO Act. Police started investigation and on completion of investigation submitted

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Charge-sheet against the accused u/s 376 (1) of I.P.C. read with Section 4 of POCSO Act.

4. The case came up before the learned Chief Judicial Magistrate, Dhemaji and the Ld. Magistrate issued process for appearance of the accused persons and on appearance furnished necessary copies to the accused persons and committed the case to this Court.

5. On receipt of the case record and on appearance of the accused persons, this Court considered the materials on record and upon hearing both the sides, my learned predecessor Shri A. Hazarika on 20-2-2017 framed charge u/s 4 of POCO Act against the accused person and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 9 witnesses including the I/O and M/O. Defence examined none. The accused was examined u/s 313 of Cr.P.C. Defence plea is of denial. Defence adduced no evidence.

6. **Point for determination :**

That, on 10-2-2016 at about 12 O' Clock at Village-Sila Ghutung Gaon under Silapathari Police Station you committed rape on Smti 'X', a minor girl aged about 7 years in the mambo bush and thereby you committed an offence punishable u/s 4 of the POCSO Act.

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7. I have gone through the evidence on record and heard arguments of both sides.

Decisions and Reasons thereof:

8. PW1 Smt. Pratibha Das deposed stated that the occurrence took place about one year ago (from the date of her recording deposition). On the day of occurrence, she had gone to jungle to fetch her goat. Then, she saw

the victim girl inside jungle and she was crying. The victim told her that a boy (accused) had done bad act with her. She (PW1) did not see the boy (accused). She also saw that the victim was bleeding and her panty was stained with blood. She was also shouting. She brought her home and handed her over to her mother. Her (victim) then lodged ejahar in the police station. Police came and saw the place of occurrence.

9. PW2 Smti Kunti Subba is the mother of the victim. She identified the accused in the dock. She deposed that the occurrence took place in the last year (2016) On the date of occurrence at about 12 PM. her daughter-victim 'X' was at home. Then she went out to pick '**Bogori**'. At that time the accused came to their house and asked the victim 'X' to get 'Biri' from the nearby shop and he followed her. Then he beat-up her daughter and her whole mouth got swollen. Then he (accused) committed rape on her. 'Buri ma' Pratibha Das brought her back home. There was bleeding from her private part and she was rushed to the Hospital. She was medically examined and then she lodged ejahar. She had asked her daughter (victim) and she told her that the accused had raped her. Police seized the birth certificate from her (PW2). At the time of occurrence the victim was 7 years old. Her statement was recorded by the Magistrate.

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10. PW3 is the Victim girl, daughter of complainant Kunti Subba. She stated that on the date of occurrence the accused came to her house and asked for water and she gave him water. Her mother went out to cut bamboo. She started playing near a Bogori tree. Then the accused asked her to come along with him. And she went with him to the shop to buy 'biri'. Then the accused took her across the rail line and said that he would beat her if raised hue and cry. He took her into jungle/ bamboo grove and there he beat her up. Then, he committed bad act with her by removing her clothes. She received injury on her private parts and blood oozed out . Her

Burima (grandma) came and saw her and brought her back home. Her mother took her to the doctor for treatment. She was also brought to the court and she gave statement before magistrate. She also stated that she recognizes the accused in the court/dock. Exhibit-1 is the Statement of the victim recorded u/s 164 Cr.P.C. and Ext-1(1) is her signature therein.

11. PW4 Shri Joy Kr. Nath stated that he does not know the complainant but he knows her daughter. He also does not know the accused. He heard from the villagers that about 2 years ago the accused did bad act with the victim. Victim's mother told him that the victim girl was aged about 7/8 years.

12. PW5 Smti Harkamaya Subba Chetia stated that complainant is her neighbor. Victim Simi is the daughter of the complainant. The accused is known to her. About one year ago, she saw an old woman taking the victim girl on her shoulder. The old woman told that while she went out to find and fetch her goats she saw that victim was crying. The victim was aged 8 years at that time. On being asked the victim told that while she was collecting 'Bagori' the accused asked her to come with him but she refused. Then accused beat her up and did bad act with her. People gathered at the house of complainant and went to the house of the accused. At his house father of the accused told the people that he (accused) had fled away.

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13. PW6 Smt. Nomita Das stated that about one year ago she heard that the accused had done bad act with the victim.

14. PW7 Shri Champal Sonowal stated that one day when he came home from college he heard hue and cry near his house. From the people gathered there, he came to know that the accused committed rape on a girl.

15. PW8 Mofizuddin Ahmed SI of police stated that on 11.02.2016 he was working as attached officer at Silapather Police Station. On that day one Kunti Subba lodged an ejahar before the O/C, Abdul Hanan. Accordingly, Silapather PS Case No. 36/2016 was registered and O/C entrusted him with the investigation of the case. During investigation he recorded statement of the complainant and the victim. The victim was sent for medical examination. He visited the place of occurrence along with the complainant. The place of occurrence is inside the bamboo grove near the rail line. He recorded statements of witnesses – Prativa Das, Joy Kumar Nath, Harka Maya Subba Chetia, Champa Sonari and Smti. Namita Das. He tried to arrest the accused but he was not found. On 15.02.2016, he forwarded the victim and Prativa Das to the court for recording their statement u/s 164 Cr. PC. On that day he seized the birth certificate of the victim from the complainant. In the mean time he got his transfer order and on 30/06/2016 he handed over the case diary to the O/C. On 13/09/2016 SI, Dilip Bonia arrested the accused in connection with a case of theft of a truck. On the following day the accused was forwarded to the court. On completion of investigation, on 29/09/2016 S.I. Dilip Bonia submitted charge sheet against the accused u/s 376(1) IPC read with section 6 of POCSO Act. Exhibit-5 is the Charge-sheet and Ext-5(1) is the signature of S.I. Dilip Bonia. Ext-2 is the ejahar and Ext-2(1) is the signature of O/C Abdul Hannan which is known to him.

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16. PW9, Dr. Chandra Kanta Mili stated that on 11.02.2016 he was posted as Sr. Medical and Health Officer at Silapather Model Hospital. On that day he examined the victim 'X' daughter of Shri Mohan Subba of Silagutung Gaon on being escorted and identified by WPC- Mitali Kachari in Medico-Legal Case no. 62/2016. On examination he found as follows:-

General Physical appearance:

Pulse 84 per minute, Temp.-_ Normal. Respiram - 14 per minute. Pupils- Black. Clothing was fresh.

Examination for injuries- There was no external injury.

Genital Examination-

External Genitelia:

Labia majora – Bruising was present.

Labia minora – Tear was found

Perinium – No injury

Hymen – Absent and tenderness.

Labia minora- Tear was found

Vagina and Cervix- Lacerated injury on the left vaginal wall, redness around the vaginal wall.

Anus- No injury

Violent mark was found on her genital part. Vaginal swab was not taken due to refusal and very tenderness. Exhibit-6 is the Medical Report and Exhibit-6(1) is his signature.

Appreciation of Evidence :

17. In this case, prosecution examined altogether 9 witnesses including the complainant and the victim. On perusal of the evidence of P.Ws, it appears that PW1 Smti Pratibha Das is a vital independent witness. From her statement, it appears that on the date of occurrence at the relevant time she went to forest to fetch her goats and then she noticed that the victim was crying. She also stated that the victim was bleeding and saw her undergarments stained with blood. On being asked, the victim told that a boy

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committed bad act with her (victim). Then she brought her back home. PW2, the complainant as well mother of the victim stated that on the date of occurrence at the relevant time the accused came to her house and her daughter was playing near a 'Bogori Tree'. She also stated that the accused ordered her daughter to get 'Biri' from a shop and he followed her. It is also in the evidence of PW2 that the accused had beaten-up her daughter and her whole mouth got swollen. Further, she stated that Pratibha Das brought her daughter back home and there was bleeding from her private part and she was rushed to Hospital. Further, she mentioned that the accused committed rape on his daughter. She also stated that at the time of occurrence her daughter was 7 years old. The victim was examined as pw3 without oath by this Court and before examination, necessary questions were put to her to test her capability /capacity to understand. On being satisfied, this Court recorded statement of the victim. The victim PW3 in her evidence, stated that the accused came to her house and asked for water and she gave him water. Her mother went out to cut bamboo and she was playing near the "Bogori Tree". The accused asked her to come along with him to a shop to get 'biri'. Then the accused took her across the rail Line and took her into a bamboo grove. The accused had beaten her up and did bad act with her. From the evidence on record it is found that pw1 noticed the victim crying in the jungle and brought her back home. The victim has in her evidence stated that the accused removed her clothes, and she also stated that she sustained injury/hurt in her private parts and blood oozed out. The victim has also clearly stated that she made statement describing the incident before the Magistrate u/s 164 Cr.P.C. and she also identified the accused in the dock as the person who committed the alleged act . So far the other witnesses are concerned; PW5 is the neighbor of PW-2, the complainant. In her evidence she stated that PW1 brought the victim on her shoulder and on being asked

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she told that while she had gone to the jungle to fetch her goat she saw the victim was crying. She also mentioned her name and her age was 8 years.

18. Another important witness in this case is the Medical Officer (PW-9) who examined the victim .On examination he found Bruising of labia majora, tear in labia minora, hymen absent and tenderness, lacerated injury on the left vaginal wall, redness around the vaginal wall and violent mark was found on her genital part

19. So far the evidence of I/O is concerned, he recorded statement of the victim and got her statement recorded by Magistrate u/s 164 Cr.PC. He also did her medically examined. He also drew a sketch map of the P.O vide Ext-3 wherein he stated that the P.O. is near the Rail Line in a forest with bamboo grove.

20. Defence cross-examined PW2, PW3, PW5 and PW9. PW2 has been cross-examined and suggestion has been put to her that Protibha Das did not tell her about involvement of the accused and that she did not state to police that the accused beaten-up his daughter and then raped her. PW2 also denied the defence suggestion that she did not mention in the FIR that the accused asked her daughter to buy 'Biri'. In her cross-examination she (PW2, the victim) stated that she did not mention the name of the accused when she made statement nor she stated that the accused did bad act with her. She denied the defence suggestion that she made false statement on being tutored by her mother. In cross-examination, PW3 stated that she did not name the accused when she had given her statement nor did she state about bad things being done to her. She denied that she has lied as taught by her mother. In cross-examination, PW3 stated that she did not mention the name of the accused when she made statement. She also stated that she did not state/explain as to what bad act the accused committed with her. She

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denied that she has given false statement on being tutored by her mother. In cross-examination PW5 denied that she did not see blood on the body of the victim. She denied that she did not state before police that she had seen blood on the body of the victim. She denied defence suggestion that she did not state before police that she did not knew about the incident from the victim. She also denied that she did not state before police that the Bengali Burhi did not lift the victim. In cross-examination PW9 denied the defence suggestion that the injury marks found inside the genital canal mentioned in his report are not based on examination.

Defence declined to cross-examine PWs- 1,4,6,7 and 8.

21. On consideration of the evidence on record particularly, the evidence of vital witnesses, it is found that all the vital witnesses corroborated one another with respect fact of occurrence and they have also corroborated one another with respect to the injuries sustained by the victim. The victim has categorically stated that the accused in the dock committed bad act with her by removing her clothes and as a result, she sustained injury on her private part and bloods oozed out from her private part. There is absolutely no material discrepancies and contradictions in the evidence of vital witnesses, and I find the evidence of the victim to be consistent, convincing and reliable. Medical report fully corroborated the oral evidence of the victim leaving no room for doubt that the accused committed penetrative sexual assault to her.

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22. Ld. Counsel for the defense while arguing the case before me, contended that the victim did not speak of rape being committed on her, but she only stated that the accused committed 'bad act' with her. He also contended that this bad act cannot construed as 'rape' or penetrative assault as defined in the relevant provision of IPC or POCSO Act.

23. I have given my anxious thought to the evidence on record and I find it difficult to accept the submission made by the defence side.

24. However, for better appreciation, I may look into the relevant provision under the PCSO Act .Sec 3 of the Act says: Penetrative sexual assault. – A person is said to commit “penetrative 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 an part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of 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.

25. From the reading of the aforesaid provision vis a vis discussion of evidence made above, it is crystal clear that act committed by the accused comes within the purview of sexual assault as defined u/s 3 of POCSO Act.

26. For appreciation evidence in a rape or sexual assault case —***In State of punjab vs Gurmit Singh (1996) 2 SCC 384 The Hon'ble Supreme Court held as follows:-*** “Rape is not merely a physical assault—it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of

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the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by the minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the back ground of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation."

27. In the case of ***Narendrakumar vs state (NCT Delhi) (2012)***

7 SCC 171. The hon'ble Supreme court held as follows:- " 20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case."

28. In the facts and circumstances of the case, on thorough scrutiny of the testimony of the victim and other PWs and in the light of the

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above legal proposition I find that the accused committed penetrative sexual assault on the minor girl/victim.

29. In view of what has been discussed above I find the prosecution has been able to prove the offence punishable u/s 4 of POCSO Act beyond all reasonable doubt.

ORDER

30. In the result, I find accused Tinku Mogor guilty u/s 4 of POCSO Act . Accordingly he is convicted thereunder.

Hearing on the point of u/ 235(2) Cr.PC.

31. It is submitted by and on behalf of the accused that he is aged about 20-21 years of age, in the prime of his youth, and it is also submitted that this is the first offence committed by the accused and there is no record of his previous conviction and pleaded for lenient view while awarding sentence.

32. I have considered all the facts and circumstances. Also considered the submission made by and on behalf of the accused .It is seen from the record that the accused committed sexual assault of grave nature upon a minor girl of aged about 8 years.

33. Considering all aspect the accused is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default R.I. for another 6 months u/s 4 of POCSO Act. Set off the period of detention.

Victim Compensation u/s 357 A Cr.P.C

34. In this case the victim is a minor aged about 8 years and as a result of the sexual assault she suffered mentally and physically and in my

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considered opinion compensation should be awarded which will help the victim to meet the expenditure for treatment if so required. Accordingly a sum of Rs.40000/- (forty thousand) is awarded as compensation to the victim u/s 357 Cr.PC. as interim measure to be paid by DLSA, Dhemaji. It may be noted that DLSA Dhemaji may award further compensation, in addition to the above after making an enquiry and considering the facts and circumstances decide the quantum of compensation.

35. A free copy of judgment be furnished to the accused.
36. Detail judgment is typed and tagged with record.
37. Given under my hand and seal of this Court on this the 20th day of February/2018.

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Appendix:**Prosecution Witnesses**

- P.W. 1 - Smt. Pratibha Das
- P.W. 2 - Smt. Kunti Subba
- P.W. 3 - Miss Joymati Subba
- P.W. 4 - Joy Kr. Nath
- P.W. 5 - Mrs Harkamaya Subba Chetia
- P.W. 6 - Smt. Nomita Das
- PW- 7 - Shri Champal Sonowal
- PW- 8 - Md. Mofizuddin Ahmen
- PW- 9 - Dr. Chandra Kanta Mili

Defence Witnesses:-None.

Prosecution Exhibits

- Exhibit-1 - Statement of the victim u/s 164 Cr.P.C.
- Exhibit 1(1) - Signatures of victim 'X'
- Exhibit 2 - Seizure List,
- Exhibit 2(1) - Signature of Smt. Majoni Phukan,
- Exhibit 3 - Medical Report,
- Exhibit-3(1) - Signature of Dr. Pranabjyoti Dutta,
- Exhibit-4 - Charge-sheet
- Exhibit-4(1) - Signature of Tuchen Chutia, I/O.,

Defence Exhibits :- None.

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