SONITPUR, ASSAM

Spl. POCSO Case No. 05/2018 u/s Sec. 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Sunil Majhi

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P

For the defence : Mr. P.P. Borah, learned Advocate.

Date of recording Evidence: 16.08.2018, 26.09.2018, 14.12.2018, 25.01.2019.

Date of Argument : 08.02.2019.

Date of Judgment : 18.02.2019.

JUDGMENT

1. The prosecution case in brief is that on 03.03.2018 the informant, Sri Prem Lal Majhi lodged an FIR with the I/C Borgang Police Out Post under Behali PS stating inter alia that on the previous day at about 6.30 PM, taking advantage of absence of the other inmates of the house, the accused Sunil Majhi tried to commit rape on his 15 year old niece (name is withheld) in his house. When the occurrence was noticed by one Bikash Soreng, he rescued the girl. The informant stated that he could learn about the incident in the next day morning.

2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused u/s 8 of POCSO Act.

charitain 50°3. The accused in due course appeared before this Court to face trial. The copies of the relevant documents were furnished to him. As the accused faced trial from custody and expressed his inability to engage a counsel of his choice to defend him, the learned defence counsel was engaged from the panel of the legal aid counsel to defend the accused at the expense of the State. After hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this Court found grounds for

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presuming that the accused had committed an offence u/s 8 of POCSÓ Act, 2012, the charge was accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.

4. During trial, the prosecution examined ten witnesses in all. The accused was thereafter examined u/s 313 CrPC. His plea was total denial. He refused to adduced any evidence on his behalf. The case was thereafter argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed sexual assault on the said victim, who is a child below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 1 is Sri Bikash Soreng, who according to Ext. 1-FIR had witnessed the occurrence. He stated that on 02.03.2018 at about 6.30 PM he came to the house of the informant Prem Lal Majhi. According to him, the grandmother of the house, a couple of children, and the victim were present in the house at that relevant time. When he asked the grandmother she could not say whereabouts of the victim. The small boy Narayan then came and told him that the accused Sunil has taken the victim towards the straw heap- "Meji" by gagging her mouth. When he asked them, they informed him that the accused has threatened him and therefore they have not gone for rescue of the victim. He thereafter went towards the straw "Meji" in search of the girl and found the accused there trampling his feet on the legs of the victim by laying her down. He saw the accused bending over the girl. He then pulled up the accused holding by his neck but the accused then threatened him by saying that he would see him. He then forcibly sent the accused from that place. The accused then asked for a bottle of whisky and Narayan brought him a half filled bottle. The accused was later handed over to police at mid night. In his cross, he stated that Narayan is about 11-12 years of age. He denied to the suggestion that he did not state before police during investigation the case that the accused had taken the victim by gagging her mouth towards the "Meji" or that the accused had threatened the children for which they did not go for the victim's rescue and that he had seen the accused trampling on the legs of the yictim and he had pulled him up by holding his neck. He in his cross-examination further stated that the clothes worn by the accused and the victim were perfectly normal at that relevant time.
- 6. As we turn to the evidence of the Investigating Officer, PW 9 SI, Raju Duwarah, we find him contradicting PW 1 and stating that PW 1 did not state before him that the accused took the victim by gagging her mouth and that the accused had threatened Narayan and that PW 1 had witnessed the incident in the light of torch and thereafter pulled up the

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Addl. Sessions Judg Addl. Sessions Charlain, Son accused by holding his neck. The contradiction of PW1 and PW9 therefore raises a doubt on the evidence of PW1 as to whether he has developed from what he had earlier stated before the Investigating Officer during investigation of the case.

- 7. PW 3 is the alleged victim. She stated that on the said day of occurrence when she was drawing water from the well in their house, the accused pulled her to the "Meji" and kissed her. At that relevant time PW 1 Bikash Soreng came and assaulted the accused. PW 1 then informed the matter to the police over phone. She proved her statement recorded u/s 164 CrPC as Ext. 2. She was medically examined, she stated. As we scrutinize the evidence of PW 3 with the evidence of PW 1, we do not find them cohesive. PW 3 did not utter any word with regard to the accused taking her towards the "Meji" by gagging her mouth. There is no evidence in her testimony that shows that the accused trampled over legs by laying her down and he bent over her. She on the other hand found to have stated that the accused had kissed her after he pulled her towards the "Meji". In her cross-examination she stated that the accused did not disrobe her and he did not touch in any inappropriate part of her body. She contradicted her evidence and stated that during investigation of the case, she had stated before police that she was preparing meal in her house when the accused came and not that she was drawing water from the well. She therefore has faltered in her own evidence.
- 8. As we turn to the evidence of the Medical Officer- PW10 Dr. Meena Borah Biswasi, we find that the doctor examining her did not find any recent sign of sexual intercourse on her . She also did not find any mark of injury on the body of the victim or on her private part. She further stated that the victim is radiologically found to be 18 years of age. She proved her Medico-Legal Report as Ext. 7. The evidence of PW10 therefore shows that there was no mark of any injury on the body of the victim and the victim was radiologically 18 years old. The Ext. 4- the Transfer Certificate of the victim as was seized from the Head Master of the School, where the victim studied on the other hand shows her date of birth as 12.11.2003. Both the Ext. 7 and Ext. 4 as relied by the prosecution are therefore found to be contradictory. There is no other reliable evidence placed to show that the victim was a child below the age of 18 years.
- 9. PW 2 is the informant, Prem Lal Majhi, who proved the FIR as Ext. 1. He was not a witness of the said occurrence. It is revealed from the Ext. 1 that he was not present in his house at the relevant time and that he had lodged the FIR in the next morning.
- 10. PW4 Beloni Gowala, PW5 Smti Rupeswari Majhi and PW 7, Ajit Kurmi have no knowledge about the said occurrence. PW6 Ajoy Munda came to the place of occurrence after being informed by the PW1. He found the victim trembling, who told him that the accused had taken her by gagging her mouth and had done 'beya kam' (bad work) on her. He did not see any mark of injury on her body. Later he apprehended the accused and kept him tied

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and later handed him over to police. He is not a witness to the said occurrence. PW 8 Stephen Barla did not witness the said occurrence. He too had heard about the incident from PW 1.

11. From the evidence of the prosecution witnesses as discussed above, we find that PW 1 Bikash Soreng and the PW3- the victim are the vital witnesses of the case. But their evidence as noticed above are found to be suffering from contradictions and incohesiveness which therefore make them unreliable. Further, we notice that the Medical Officer- PW10 had stated that the victim was 18 years old at that relevant time which contradicted the Ext.4. From the contradictory evidence that emanated, it cannot be ascertained that the victim is a child below the age of 18 years. Under such circumstances, I find that the prosecution has failed to prove its case. As such, I acquit the accused from the offence charged against him and set him at liberty forthwith. As the accused faced trial from custody, the Jail Authorities be directed to release the accused immediately, if he is not required in any other case. The seized certificate be restored on the owner. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 18th day of February, 2019.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Addl. Sessions Judge Biswanath Chanali, Sonitput



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Bikash Soreng

PW2- Sri Prem Lal Majhi

PW3- Victim

PW4- Smti Beloni Gowala

PW5- Smti Rupeswari Majhi

PW6- Sri Ajoy Munda

PW7- Sri Ajit Kurmi

PW8- Sri Stephen Barla

PW9- S.I. Raju Duworah (I.O.)

PW10- Dr. Mina Borah Biswasi (M.O.)



Exhibits proved by the prosecution witnesses:

Ext.1- FIR

Ext.2- Statement of the victim u/s 164 CrPC

Ext.3- Sketch map

Ext.4- Seizure list

Ext.5- Zimmanama

Ext.6- Chargesheet

Ext.7- Medico-legal Report

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addl. Sessions Judge Biswanath Charlall, Sonitpur