IN THE COURT OF THE SPECIAL JUDGE SONITPUR :: TEZPUR

Special (POCSO) Case No. 05 of 2015.

GR Case No. 2287/13

(Section 8 of the Special POCSO Act, 2012)

State of Assam

- Versus -

Md. Hasen Ali

Present : Mr. P.J. Saikia, AJS,

Special Judge, Sonitpur, Tezpur.

Appearance:

For the State : Mr. H.P .Sedai,

Public Prosecutor.

For the accused : Sri Ashok Mahanta Advocate.

Date of evidence : 17-11-2015,18-12-2015

06-02-2016,14-03-2016

& 26-04-2016

Date of 313Cr.P.C.

statement of accused. : 01-06-2016

Date of argument : 01-06-2016

Date of judgment : **01-06-2016**

JUDGMENT

1. This is a case under the Protection of Child from Sexual Offences Act, 2012 (POCSO Act in short).

The Prosecution case.

- 2. On the day of occurrence, the fifteen years old prosecutrix had gone to the river bank to cut and collect grass. At that time the accused was also cutting grass on the bank of the river. While the prosecutrix was cutting grass suddenly pounced upon her from behind. The accused had a sickle in his hand and with that he threatened her of dire consequence if she tried to raise alarm. Out of fear, the prosecutrix kept mum. The accused had removed her clothes and committed rape upon her. The accused also put the sickle on the neck of the prosecutrix and asked her whether she will marry him. The prosecutrix answered in affirmative and thereafter she was allowed to go. Immediately, the prosecutrix went home and informed her mother about the said occurrence.
- 3. The father of the prosecutrix had lodged an ejahar before the police wherein he had alleged that the accused had tried to drag his daughter deep into the nearby jungle and by putting a sickle on her neck, the accused had procured the consent of his daughter that she will marry him. The informant/father has also alleged in the ejahar that his daughter had agreed to marry him under the fear of sickle and for that matter his daughter was released by the accused.
- **4.** During the period of investigation, the victim girl was produced before a Judicial Magistrate for recording her statement u/s 164 Cr.P.C. She has stated before the Magistrate that at the time of occurrence the accused had gagged her mouth and forcibly took her to the deep of the nearby jungle. The prosecutrix has also stated before the Magistrate that putting a sickle on her neck the accused had asked her as to whether she will marry him. According to the prosecutrix after

she agreed to the proposal of marriage, the accused had committed rape upon her by removing her clothes.

- **5.** Police seized one under pant and one long pant which were reportedly worn by the victim at the time of occurrence. Those clothes were sent for Forensic examination and no human semen was found in those clothes.
- **6.** The victim was also subjected to the medical examination on the next day of the day of occurrence. The Doctor opined that the victim appeared to be below 18 years of age. The report of the doctor did not support the prosecution case.

Point for determination.

7. The only point for determination in this case is as to whether the accused had penetrative sexual intercourse upon the prosecutrix.

Decision and Reasons thereof

- **8.** In the instant case, as many as twelve numbers of witnesses have been cited by the Investigating Officer. Out of the said twelve numbers of witnesses, three are official witnesses. In this trial, the prosecution has examined eight witnesses.
- **9.** For deciding the point for determination, I shall take up the evidence of prosecutrix first. In her examination-in-chief, the prosecutrix has supported the prosecution case. She has stated before the learned defence counsel that when she had gone to the river bank to cut grass, her fellow villager Kamal Chouhan was also cutting grass at the same place. She has also stated that the accused came to the river bank at a subsequent stage. The prosecutrix has also stated

before the learned defence counsel that when she was having an argument with the accused at the place of occurrence at the relevant time, Kamal Chouhan came near her. The prosecutrix has also stated that the ejahar that was filed by her father was written by a person called Tapan Chakraborty and she was present when her father had put his signature in the said ejahar.

- **10.** Now, I shall take up the evidence of Moneswar Chouhan, the father of the prosecutrix. This witness has stated in his evidence that on the day of occurrence he was returning from Borsola in a bicycle and he saw that his daughter along with 10/20 numbers of women were going towards the Police station. This witness came to know about the occurrence only at that time. He also went to the Police station and lodged the ejahar which is marked as Ext. 2.
- **11.** The witness Moneswar Chouhan has stated before the learned defence counsel that the Ext. 2 was written according to his instruction and at that time his wife and the prosecutrix were present with him.
- **12.** Now, I shall take up the evidence of Tapan Chakraborty. He wrote the ejahar. He has stated in his evidence that he wrote the ejahar after Moneswar Chouhan had narrated the entire facts before him. Tapan Chakraborty also stated that he had read over the contents of the ejahar to Moneswar Chouhan before the later had put his signature thereon.
- **13.** The name Kamal Chouhan has been referred to by the prosecutrix in her evidence. Kamal Chouhan has stated in his evidence that the mother of the prosecutrix is his niece. The witness has stated that on the day of occurrence he was cutting grass at the river bank and at that point of time he had seen the accused, who was carrying a

sack of grass on his back, running past him. Kamal Chouhan has stated that at that point of time he had heard the mother of the victim girl, shouting loudly and saying that the accused had attacked the prosecutrix.

- **14.** Before the defence counsel, the witness Kamal Chouhan has clearly stated that while he was cutting grass at the time of occurrence, he did not see the prosecutrix near him. He also did not see the accused and the prosecutrix together at the place of occurrence at the relevant time.
- **15.** The prosecution side has examined a witness named Paban Chouhan who is a cousin of the prosecutrix, Laxmania Chouhan who is a neighbor of the prosecutrix and the Doctor who examined the victim at the time of investigation.
- 16. The remaining witness is the mother of the victim girl. She has stated that at the relevant time of occurrence her daughter had gone to the river bank to cut grass and after sometimes she returned home. The witness has stated that her daughter was crying at that time and she reportedly told her that the accused had dragged her into the jungle and there he had committed rape upon her. The mother of the victim girl immediately went to the river bank in search of the accused. She met him on the river bank. According to the mother of the prosecutrix, the accused on seeing her had fled leaving behind his sack of grass.
- **17.** Before the defence counsel, the mother of the prosecutrix has admitted that while Tapan Chakraborty was writing the ejahar for them, she and her daughter were present there. The mother has claimed that Tapan Chakraborty did not put the actual facts in the

ejahar which they told him. The mother has clearly stated that Tapan Chakraborty has written an erroneous ejahar. The mother of the victim has also disclosed before the learned defence counsel that when her daughter had gone to the river bank to cut grass, the witness Kamal Chouhan was already there and was cutting grass.

- **18.** I have carefully gone through the prosecution evidence. In this case, the prosecutrix and her mother have supported the fact that on the day of occurrence, the accused had committed rape upon the prosecutrix. But the father of the prosecutrix as well as the person who wrote the ejahar has not supported the aforesaid fact. Furthermore, the evidence of Kamal Chouhan remains unchallenged in this case. He has stated that he never saw the prosecutrix at the place of occurrence at the relevant time.
- **19**. The victim was medically examined on the next day of occurrence but the doctor did not find any injury marks on her person or any symptoms of sexual intercourse. The Forensic report also could not find any trace of semen on the undergarments of the prosecutrix.
- **20.** It is settled position of law is that ordinarily the evidence of a victim of sexual attack deserve to be considered sacrosanct. Once the statement of the prosecutrix inspires confidence and is allowed by the Court as such, conviction can be based only on solitary evidence on the prosecutrix and in corroboration could be required unless there are appropriate reasons which necessitate the Court to seek corroboration and the statement of the victim lady her testimony has to be proved on the principle of probability just as the testimony of any other witness. Thus the law relating to mode of appreciation of evidence of a rape victim is very clear.

21. In Rajoo & Ors. v. State of Madhya Pradesh (AIR 2009 SC 858), the Hon, ble Supreme Court has held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The court however, further observed:

It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. There is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

22. Coming back to the case in hand, I have carefully considered the prosecution evidence of the record. I have found that there are serious contradictions in the evidence of the prosecutrix. Her evidence has not been supported by Kamal Chouhan, Moneswar Chouhan and Tapan Chakraborty. There is nothing in evidence to suggest that Kamal Chouhan was nurturing enmity towards the victim and accordingly spoke against her. There is also nothing in evidence to suggest that Moneswar Chouhan would speak against his daughter and Tapan Chakraborty wrote an ejahar wherein baseless facts were narrated. The evidence of the prosecutrix failed to inspire confidence at this stage. I have no doubt that the prosecution has failed to prove the

offence against the accused Md. Hasen Ali beyond all reasonable doubt.

ORDER

23. That being the position, the accused Md. Hasen Ali is found not guilty and he is acquitted from this case.

Given under my hand and seal of this Court on this $1^{\rm st}$ day of June, 2016.

(P.J.Saikia) Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(P.J. Saikia) Special Judge, Sonitpur, Tezpur.

Typed by me.

(R. Hazarika), Steno.

APPENDIX

Prosecution witnesses:

P.W. 1 -	victim
P.W. 2 -	Sri Moneswar Chouhan, informant.
P.W. 3 -	Dr. Jharna Kakoti, M.O.
P.W. 4 -	Smti. Rasmi Chouhan,
P.W. 5 -	Sri Paban Chouhan,
P.W. 6 -	Sri Kamal Chouhan,
P.W. 7 -	Smt. Laxmania Chouhan,
P.W. 8 -	Sri Tapan Chakraborty.

Defence witnesses

NIL

Prosecution Exhibit

Ext.1 - 164 Cr.P.C. statement of the victim. Ext.2 - FIR

Ext.3 - Medical report. Ext.4 - advice slip

Ext.5 & 6 - Laboratory reports.

Ext.7 - X-ray report.

Defence Exhibits

NIL

(P.J. Saikia) Special Judge Sonitpur, Tezpur.