# CAUSE TITLE POCSO Case No. 17/16

Informant: Smti. Mamun Das,

W/o- Sri Anupam Das, R/o- Gandhinagar, PS- Dibrugarh, District- Dibrugarh.

Accused: Sri Dhaniram Tanti,

S/o- Late Arkit Tanti, R/o- Gandhinagar, PS- Dibrugarh, District- Dibrugarh.

# ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. For the Defence: Mr. A Rob, learned Legal Aid Counsel.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 17/16 G.R. Case No. 05/16

> > State of Assam

-Vs-

Sri Dhaniram Tanti

Charges: Under Section 6 read with Section 5(m) of the POCSO Act.

Date of evidence on : 08-06-16, 04-07-16, 01-08-16, 28-11-16 & 09-08-17.

Date of argument : 22-08-17. Date of Judgment : 19-09-17.

## **JUDGMENT**

- 1) A brief account of this case is that on 01-01-16, at about 11:30 am, Sri Dhaniram Tanti (hereinafter the accused) committed rape on the eight years old victim X in the absence of her parents. He took the victim to a vacant house and committed rape on her. On that day, Smti. Mamata Karmakar who witnessed the incident charged against the accused and the accused fled. An ejahar regarding this incident was lodged by the victim's mother Smti. Mamun Das (hereinafter the complainant). A GD Entry was registered as Milan Nagar OP GDE No. 12 dtd. 01-01-16 and the FIR was forwarded to the Officer-in-charge of Dibrugarh Police Station for registration of a case. The FIR was registered as Dibrugarh PS Case No. 4/16 and investigation commenced. The investigating officer (IO in short) went to the place of occurrence and recorded the statements of the witnesses and forwarded the victim for medical examination and also for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). On finding prima facie materials, Charge-Sheet was laid against the accused under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO in short).
- 2) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 6 of the POCSO Act was framed,

- read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 3) To substantiate the case, the prosecution adduced the evidence of nine witnesses including the medical officer (MO in short), Judicial Magistrate, 1<sup>st</sup> Class and the IO. The accused cross-examined the witnesses in defence. On the circumstances arising against him, the accused was questioned under Section 313 CrPC and the accused pleaded innocence.
- 4) I have heard the arguments submitted by both the sides.

#### **POINT FOR DETERMINATION:**

1. Whether on 01-01-16, 11:30 am, the accused committed aggravated penetrative sexual assault on the eight years old minor victim?

#### **DECISION THEREON AND THE REASONS FOR THE DECISION:**

- 5) The alleged victim X who is only eight years old deposed as PW-1 that the accused is her neighbour. On the day of incident, she was playing on the road in front of her house and then the accused called her and when she refused to go with him, the accused dragged her to an abandoned house. He spread a gunny bag on the floor and made her lie on the gunny bag. He removed her panty and also his own pant and inserted his penis into her vagina. She could not scream as he gagged her with the palm of his hand. Meanwhile, the sister-in-law of her father and her maternal aunt arrived at the place of occurrence and assaulted the accused. Then she returned to her house and the accused fled away. The police apprehended him. The police forwarded her to the Magistrate for recording her statement. She was also forwarded to Assam Medical College & Hospital, Dibrugarh for her medical examination. Ext. 1 is her statement before the Magistrate and Ext. 1(1) and Ext. 1(2) are her signatures.
- 6) In her cross-examination, she stated that her mother was absent at the time of incident, because her mother was on duty.
- 7) The evidence of PW-1 is corroborated and supported by the evidence of complainant. The victim's mother Smti. Mamun Das testified as PW-2 that the accused is a resident of Gandhi Nagar. The incident took place on 01-01-16. On that day, she went for work at about 8:30 am. At that time, her daughter X and her elder sister Mala Mech and her sister Mamta Karmakar were in her house. At about 11:00 am, her sister informed her over phone that an

unfortunate incident took place and she was asked to return to her house immediately. When she returned home, her sister informed her that her daughter X was taken by the accused to an abandoned house. They also informed her that they caught the accused red-handed lying atop her daughter's body on the floor of the abandoned house. She also noticed that the accused was held captive by her neighbours. When she asked her daughter, her daughter informed her that the accused dragged her forcefully while she was playing in front of her house and committed bad work by removing her panty and also by removing his own pant. Then she checked the private part of her daughter and noticed some white fluid, but there was no blood. PW-2 further testified that the accused probably attempted to commit penetrative sexual intercourse, but could not complete the act, as her sister arrived and rescued her daughter. Her daughter was eight years at the time of the incident. The accused fled away from the scene and she narrated about the incident before the person in the police station who wrote the FIR and she affixed her signature on the FIR. Ext. 2 is the FIR and Ext. 2(I) is her signature. She also took her daughter to the police station and the police recorded their statements. The police forwarded her daughter to Assam Medical College & Hospital, Dibrugarh for medical examination and also to the Magistrate for recording her statement. She also accompanied her daughter to the Court. During investigation, the police seize one empty gunny bag of Star Cement, one red colour hawai sapple belonging to the accused person.

- 8) In her cross-examination, she admitted that Mala Karmakar resides in a separate house near her house. When she returned to her house, she did not meet any other person, except her elder sister and her sister. The accused person's house is 200 yards away from her house. She also admitted in her cross-examination that she had no knowledge as to whom the sandal and the gunny bag belonged.
- 9) The evidence of PW-1 & 2 is perfectly corroborated by the evidence of Smti. Mala Mech. She testified as PW-3 that the victim X is her younger sister Mamun's daughter. She testified that the incident took place on 01-01-16. On that day, at about 11:30 am, while she was in her house which is adjacent to Mamun's house, X was playing in front of her house as Mamun went out for work. She noticed that X was not present in front of her house. So she went searching for X with Mamata Karmakar. While they were searching for

X, they noticed that in an abandoned house, near the other side of the road, the accused person made X lie down on the floor of the room and he was lying atop her body. On witnessing the incident, she assaulted the accused with a lathi that was lying in the abandoned room. Then the accused tried to flee. But at that time, Deep Tanti and Sunil Gowalla arrived at the spot and caught the accused person. They took X from the place of occurrence and informed her mother who was in her workplace. Her sister Mamun immediately arrived at her house and then she filed an FIR with the police at Milan Nagar Outpost and the police arrived at the spot. Mamun Das along with the victim X went to the police station. The age of the victim X was about ten years. Her cross-examination is not noteworthy.

- 10) The evidence of PW-1, 2 & 3 is supported and corroborated by the evidence of PW-4 Smti. Mamata Karmakar. She testified that X is the daughter of her elder sister Mamun Das. The incident took place on 01-01-16 at about 11:30 am. At that time, she was in her house which is adjacent to the house of Mamun Das. At about 11:30 am, X was playing in front of her house along with her daughter. Suddenly, she noticed that X was missing and so she went out searching for X along with Mala Mech. Then she and Mala Mech noticed that X was lying on the floor of an abandoned house and the accused was lying atop X's body. On witnessing the incident, Mala Das assaulted the accused with a bamboo stick. Then the accused fled, but Deep Bagti along with a person named Sunil Gowalla reached the place of occurrence and caught the accused person. They took X to her house and informed her mother. X informed them that while she was playing, the accused came and forcefully dragged her to the abandoned house and tried to commit bad work by removing her panty. She also informed them that while she tried to shout, the accused gagged her with the palm of his hand. She was weeping at that time. She was only eight years at that time and her mother Mamun Das lodged an FIR with the police. Her cross-examination is not noteworthy.
- 11) The evidence of PW-1, 2, 3 & 4 is perfectly corroborated by the evidence of PW-5 & 6.
- 12) Sri Sunil Gowalla testified as PW-5 that the incident took place about seven months back. At the time of the incident, at about 11:30 am, while he was returning from the shop towards his house, he noticed that the accused was confronted and assaulted by Mamata Karmakar and Mala in front of an

abandoned house beside the road. Then he along with Deep Bagti caught the accused and slapped him and then he learnt from Mala and Mamata that the accused attempted to commit rape on X in an abandoned house. He also noticed that X was weeping and she was beside Mala and Mamata and when he asked X about the incident, X informed him that while she was in front of her house, the accused forcefully took her to the abandoned house and attempted to commit the shameful act with her. PW-5 further testified that the accused person whom they caught, fled away from the place of occurrence in the pretext that he will put on his clothes in his house and return. After a while, Mamun Das arrived at the place and then she went to the police station and lodged an FIR.

- 13) In sync with the evidence of PW-1, 2, 3 & 4, Sri Deep Bakti testified as PW-6 that the incident took place on 01-01-16. On that day, at about 11:30 am, while he was returning from work towards his house, he noticed that Mala Mech and Mamata Karmakar caught the accused person on the road near an abandoned house and confronted him. When he asked his sister Mala, she informed him that the accused kept X in the abandoned house and tried to commit bad work with her. The accused also fled from the place of occurrence in the pretext of putting on some clothes and retuning. After a while, Mamun Das arrived from her workplace and went to the police station.
- 14) Smti. Priyanka Nair, Judicial Magistrate, 1<sup>st</sup> Class, testified as PW-8 that on 02-01-16 while working as Judicial Magistrate, 1<sup>st</sup> Class, she recorded the statement of the victim X under Section 164 CrPC in connection with Dibrugarh PS Case No. 4/16 under Section 4 of the POCSO Act. Ext. 1 is the statement of the victim X and Ext. 1(3) is her signature.
- 15) I have perused the statement of the victim. The victim's statement before the Magistrate and her evidence in the Court is consistent. The only contradiction is that the victim did not implicate in her statement under Section 164 CrPC that the accused inserted his penis into her vagina. She stated before the Magistrate under Section 164 CrPC that the accused made her lie on the floor and then he climbed atop her and then he touched her vagina with his hand.
- 16) Thus, it is clear from the evidence of PW-8 that the accused did not commit penetrative sexual assault on the victim, but he committed sexual assault on the victim. The evidence of PW-8 is also supported by the evidence of MO Dr. Nibedita Shyam, who testified as PW-7 that on 01-01-16, she examined the

victim X and on examination, her opinion was that:-

- 1. The victim was above eight years and below nine years;
- 2. There was no evidence of sexual intercourse on her person;
- 3. There was no evidence of recent injury on her body or private part.
- 17) Ext. 3 is the Medico-legal Report and Ext. 3(1) to Ext. 3(3) are her signatures.
- 18) The IO is a formal witness and SI Rajani Saikia testified as PW-9 that on 01-01-16, while he was posted as SI at Milan Nagar Outpost, the In-Charge of the Milan Nagar Outpost endorsed him to investigate the case registered on the basis of FIR lodged by Smti. Mamun Das as GDE No. 12 dtd. 01-01-16. The FIR was forwarded to the Officer-in-charge of the Dibrugarh Police Station for registration of the same under proper sections of law. Ext. 2 is the FIR and Ext. 2(2) is the signature of Dinanath Milli of Dibrugarh Police Station which is familiar to him. He found the victim and her mother in the outpost and forwarded the victim to Assam Medical College & Hospital, Dibrugarh. He recorded their statements and then went to the place of occurrence along with the informant. He seized a gunny bag of Star Cement and a pair of hawai chappal. Ext. 4 is the Seizure-List and Ext. 4(1) is his signature. He prepared Sketch-Map of the place of occurrence. Ext. 5 is the Sketch-Map and Ext. 5(1) is his signature. He forwarded the victim to the Magistrate for recording her statement under Section 164 CrPC. He arrested the accused on 04-01-16 and forwarded him to the Court. He collected the Medico-legal Report of the victim and on finding prima facie materials, he submitted Charge-Sheet against the accused under Section 4 of the POCSO Act. Ext. 6 is the Charge-Sheet and Ext. 6(1) is my signature.
- 19) Recapitulating the entire evidence, it is thereby held that the evidence of the witnesses is corroborative. It is true that PW-1 deposed that the accused inserted his penis into her vagina, but this could not be proved due to lack of evidence. There is a hint of emission of semen when PW-2 testified that she noticed discharge of white coloured fluid on her daughter's private part, but she too testified that the accused attempted to commit rape. The witnesses PW-2, 4 & 5 clearly stated that the accused attempted to commit rape on the victim. The witnesses PW-3 & 4 saw the accused while he attempted to commit rape on the victim while they were searching for the missing girl X.

they came upon the abandoned house and found the accused inside the house. They saw the accused was lying atop the victim's body and attempting to commit rape on the victim. The MO's evidence clearly depicts that the victim did not sustain any injury. She was immediately taken to the medical officer on the same date, i.e., 01-01-16 and she was examined immediately, but no injuries or spermatozoa or semen was detected after examination of the victim. The evidence of PW-5 & 6 affirms that when the accused was caught red-handed by PW-2 & 3, they came across the accused being confronted by PW-2 & 3 on the road, in front of the abandoned house. Both PW-5 & 6 witnessed that the accused was being confronted by Mala Mech and Mamata Karmakar. The evidence of PW-2 also affirms that her sister called her over phone and asked her to return home immediately. There is clinching evidence that the incident took place on 01-01-16 at about 11:30 am. No contradiction could be elicited by the cross-examination of the witnesses. There is also clinching evidence that after the accused was apprehended by PW-6 & 7, he fled away in the pretext of wearing clothes. There is clinching proof that the accused was caught red-handed while he sexually assaulted the victim.

- 20) In view of my foregoing discussions, it is thereby held that the prosecution could prove beyond reasonable doubt that the accused committed sexual assault on the victim. As there is contradiction regarding the victim's statement of penetrative sexual assault, so the accused is not held guilty of the offence under Section 6 of the POCSO Act. There was no penetration and so the accused is not held guilty of penetrative sexual assault. The evidence is crystal clear that the accused is guilty of sexual assault. So, the accused is held guilty of sexual assault. The exact age of the victim could not be ascertained by the prosecution.
- 21) I have heard the accused on the point of sentence. He has prayed for leniency. I have considered the age and antecedent of the accused.

#### **SENTENCE**:

22) The accused Sri Dhaniram Tanti is convicted under Section 8 POCSO Act and is sentenced to undergo rigorous imprisonment for 3 (three) years and a find of Rs. 500/- (Rupees Five Hundred) only, in default of payment of fine, to undergo rigorous imprisonment for 1 (one) month. The period of detention already undergone by the accused during investigation and trial is set off with

his custodial sentence.

- 23) Destroy the seized articles as per law.
- 24) Furnish free copy of judgment to the accused and to the District Magistrate.
- 25) The victim who has undergone such an ordeal deserves compensation. This case is thereby recommended for compensation to the District Legal Services Authority, Dibrugarh to decide the quantum of compensation to be awarded to the victim under the Victim's Compensation Scheme.

  Judgment is signed, sealed and delivered in the open Court on the 19<sup>th</sup> day of September, 2017.

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**

## List of witnesses:

- 1. PW-1 The victim X;
- 2. PW-2 Smti. Mamun Das;
- 3. PW-3 Smti. Mala Mech;
- 4. PW-4 Smti. Mamata Karmakar;
- 5. PW-5 Sri Sunil Gowalla;
- 6. PW-6 Sri Deep Bakti;
- 7. PW-7 Dr. Nibedita Shyam;
- 8. PW-8 Smti. Priyanka Nair; and
- 9. PW-9 SI Rajani Saikia.

## List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Seizure-List;
- 5. Ext. 5 Sketch-Map; and
- 6. Ext. 6 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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