CAUSE TITLE POCSO Case No. 52/16

Informant: The victim 'X'.

Accused: Sri Mohan Mahali,

S/o- Late Jagadish Mahali,

R/o- Purana Line, Juktoli Tea Estate,

PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Mr. MP Todi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 52/16 G.R. Case No. 1837/16

> > State of Assam

-Vs-

Sri Mohan Mahali

Charges: Under Sections 8 of POCSO Act, read with Section 354 IPC.

Date of evidence on : 05-01-17, 06-02-17, 21-03-17, 19-06-17 & 05-09-17.

Date of argument : 03-11-17. Date of Judgment : 17-11-17.

JUDGMENT

- 1) A brief account of the case is that on 10-07-16, at about 1:30 am, midnight, Sri Mohan Mahali (hereinafter the accused) entered into the victim's house and gagged her and attempted to commit rape on her. When she raised alarm, the accused fled. An ejahar regarding this incident was lodged by the victim X with the police at Borbari Outpost. A GDE No. 168 dtd. 17-07-16 was registered and the FIR was forwarded to the Tingkhong Police Station. the FIR was registered as Tingkhong PS Case No. 75/16 under Sections 448/376/511 IPC of the Indian Penal Code (IPC in short), read with Section 8 of the Protection of Children from Sexual offices Act, 2012 (POCSO Act in short) and SI Numal Baruah was entrusted with the investigation.
- 2) The investigating officer (IO in short) swung into action. He recorded the statements of the witnesses and prepared the Sketch-Map of the place of occurrence. He forwarded the victim to the Magistrate for recoding her statement and to the doctor for medical examination. On finding prima facie materials, he submitted Charge-Sheet against the accused under Sections 448/376/511 IPC.
- 3) On appearance of the accused, copies were furnished and a formal charge under Section 354 IPC read with Section 8 of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and

- claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of seven witnesses including the medical officer (MO in short) and exhibited several documents. The defence cross-examined the witnesses in extenso. The accused did not tender any evidence in defence. However, on the questions, regarding each and every circumstances arising against him, the tenor of the answers of the accused person depicts the plea of total denial. He stated that he was attending a marriage function on the fateful night.

SUBMISSIONS:

5) The learned Public Prosecutor Smti. Runumi Devi and Addl. Public Prosecutor Mrs. Shahnaz Akhtar submitted that this case has been proved beyond a reasonable doubt and the accused deserves stringent punishment. The learned defence counsel laid stress in his argument that this case is bereft of evidence and is replete with contradictions. It is submitted that the victim's younger brother was not examined. It is also submitted that the victim's testimony is contradictory to the testimonies of the other witnesses. The victim stated biting the accused in defence, whereas no bite marks were detected on the accused person hand where the victim claimed to have bitten.

POINTS FOR DETERMINATION:

- 6) On the backdrop of the rival contentions, the following points are apposite for the proper decision of this case:
 - I. Whether the accused committed sexual assault on the victim on the midnight on 11-07-16?
 - II. Whether the accused outraged the modesty of the victim at the same time and place?

DECISION THEREON AND THE REASONS FOR THE DECISION:

7) The alleged victim testified as PW-1 that on 10-07-16, at about 11:00 am, she returned from a function along with her younger brother Sri Arjun Tanti to her house while her father stayed back in the function. They were alone in her house. Both her brother and herself fell asleep. At about 3:00 am, midnight, she woke up as the accused entered into her house and touched her chest and gagged her. She kicked away the accused and then fled. She could recognize the accused with the help of the burning light in the room. She screamed and went to Kalawati's house which is near her house. She

informed her sister-in-law Kalawati about the incident. She along with her brother Anukhon Tanti and Kalawati went to the VDP Secretary's house the same night and asked him to draft a complaint, but he refused and advised them to go to the police station. On the next morning, they went to the police station. On the following day, she met her father and informed him about the incident. She narrated the incident to the scribe of the ejahar who wrote the ejhar and read over the ejahar to her and then she affixed her signature over the same. She met the scribe near the Borbari Outpost. Ext. 1 is the FIR wherein Ext. 1(1) is her signature. The police recorded her statement. She went to the police station along with all her family members including her father. The police recorded her statement. She was also forwarded to the Magistrate for recording her statement. Ext. 2 is her statement and Ext. 2(1) upto Ext. 2(3) are her signatures.

8) In her cross-examination, she stated that there was a road between her house and the place where the function was organized by Anil Karmakar. The pandal of the function stretched over the road. Her father was in the function for the entire night. Her younger brother Arjun was seven years old. After returning from the function, she shut the door and fell asleep along with her brother. About twenty odd people were still in the function, when she returned home. They were all relatives of Anil Karmakar and besides relatives, some other people including Gabbar Singh, Sankar Karmkar, Biru Garh, Gabbar Singh Bouri, Sanjay Karmakar and four other people were also present in the function. After the incident, she did not go to the function where her father was present. When the accused fled, she bit his hand and he sustained injury on his leq. After the incident, she went to her brother Anukan Tanti's house. She further testified in her cross-examination that on the following morning of the incident, at about 7:00 am, she, her brother Anukan, Ram Bouri, Laxman Bouri, Bharat Bouri, her elder sister Anjali Bouri and her two sister-in-laws went to the accused person's house, as they all wanted to verify whether the accused person had any bite mark or injury marks on his leg, but could not detect any injury. When the accused was confronted by them, he denied the allegation. She further testified that the accused voluntarily went along with them to the police station and made no attempts to flee. Remaining part of her cross-examination is vehement denial of the suggestions by the learned defence counsel, which will be discussed at

- the proper stage.
- 9) Smti. Kalawati Tanti testified as PW-2 that on 10-07-16, at about 3:00 am, midnight, the victim went running to her house and woke her up and her husband. X was crying and was calling her and she informed her that the accused entered into her house and gagged her. Then she along with her husband went to the Secretary Sadananda's house on the same night and informed him about the incident. On the next morning, she and all her family members went to the Secretary's house and then they again went to the accused person's house and confronted him about the incident of the previous night. The accused denied entering into the victim's house. At that time of the alleged incident, the victim's mother was not in the house, because she was staying separately from her husband due to some dispute between them. Then she (PW-2) returned home and X accompanied by her husband and other people went to the police station.
- 10) In her cross-examination, she testified that there was a function in front of X's house and the pandal extended over the road. She also attended the function at Anil Karmkar's house and returned at about 11:00 pm. She did not know whether X's father was in the function the entire night, but when she went to the function, X's father Anand Tanti was in the function.
- 11) Smti. Manjula Tanti testified as PW-3 that the victim X is her daughter who is around sixteen years of age. At the time of the incident, she was not at home, because she stayed separately from her husband and her daughter X. On the following day of the incident, she heard that her daughter X had gone to the police station regarding the incident. She then came to her house and asked her about the incident and her daughter informed her that the accused entered into her house at 3:00 am and gagged her and touched her chest. She accompanied her daughter to the police station and she lodged a case against the accused. Her cross-examination is not noteworthy.
- 12) Sri Anukhon Tanti testified as PW-4 that the victim X is her cousin. The incident occurred on 10-07-16. On the night of the incident, at about 12:00 am, while he was sleeping, his sister X came to his house and informed him that while she and her elder brother were alone in the house, the accused came to her house and gagged her and touched her chest, but she bit the accused on his hand and somehow, he managed to escape and fled away from her house. Thereafter, X came to his house and informed him about the

incident and X was also crying at that time. X was also holding a knife when she came to his house. They then went to the Garden Secretary's house and informed him about the incident. On the following morning, he along with X, Ram Bouri, Laxman Bouri, Bharat Bouri and Anjali Bouri went to the accused person's house and confronted the accused about the incident, but the accused denied of being complicit. Thereafter, they again went to the Secretary's house and then went to the police station and informed the police about the incident.

- 13) In his cross-examination, he stated that Anil Karmakar's house was opposite to the victim's house. There was a function in Anil Karmakar's house on the day of the alleged incident and the pandal was constructed on the road between Anil Karmakar's house and X's house. The victim's father Anand Tanti and the accused was also present in the marriage function and Anand was present throughout the night in the function. If one screams from the victim's house, cries will definitely be heard in Anil Karmakar's house. X went to their house and informed them that they bit the accused person's hand and while he tried to escape, the accused also sustained injury on his hand. He did not see the injury on the accused person's body. He did not know whether the villagers went to check whether the accused person sustained injury on his leg to confirm that he is the same person who entered X's house.
- 14) Sri Anil Karmakar testified as PW-5 that the incident took place on 10-07-16 and on the evening, there was a religious function in his house. On the following morning of the incident, he heard from X's family members that the accused entered into her house. Later on, he learnt that X lodged an ejahar with the police at Borbari Outpost with allegation that the accused entered into her house.
- 15) In his cross-examination, he testified that the religious function in his house continued till morning and the victim's father and the accused was present during the function. He did not know who entered into the victim's house, but he heard that they suspect the accused of entering into the victim's house.
- 16) The medical officer Dr. Ashrulina Deori testified as PW-7 that on 12-07-16, she examined the victim X and found the following:

On dental examination:

Temporary: Nil. Permanent- All. Total: 14 + 14= 28.

- X-ray requisition was given to woman constable 917 Urmila Chetia on 12-07-16, but till date X-ray report is not found.
- 17) On the basis of Physical and dental examination done on the victim X, the medical officer as PW-7 opined that-
 - (1) Her approximate age is 16 to 17 years. However, to know the exact age of the victim, X-ray report is necessary;
 - (2) Opinion regarding sexual intercourse and physical injury could not be given as the victim girl refused medical examination.
 - Ext. 4 is the Medico-legal Report wherein Ext. 4(1) to Ext. 4(3) are the signatures of PW-7.
- 18) SI Numal Chandra Bora testified as PW-6 that on 11-07-16, he was posted at Borbari Outpost and at that time, the In-Charge of Borbari Outpost Sri Seniram Paga received an FIR and registered a GDE No. 168 dtd. 11-07-16, and forwarded the same to the Officer-in-charge (OC in short) at Tingkhong Police Station and entrusted him with the investigation of the case. After receiving the FIR, the OC registered it as Tingkhong PS Case No. 75/16 and directed him to continue the investigation. Ext. 1 is the FIR and Ext. 1(2) is the signature of the OC at Tingkhong Police Station, which is familiar to him. He recorded the statement of the victim X in the outpost and forwarded her to the Magistrate for recording her statement and also to the medical officer for medical examination. He visited the place of occurrence and recorded the statements of witnesses whom he found in the place of occurrence. He prepared the Sketch-Map. Ext. 3 is the Sketch-Map and Ext. 3(1) is his signature. He arrested the accused and forwarded him to the Court and he also collected the medical report of the victim. Ext. 4 is the medical report of the victim X. on finding prima facie materials, he submitted Charge-Sheet against the accused under Section 8 of the POCSO Act.
- 19) In his cross-examination, he stated that he did not collect the school certificate in support of the age of the victim. He did not record the statement of the VDP Secretary Sadananda and the victim's brother Arjun Tanti. He also did not record the statement of Ram Bouri, Laxman, Bharat Bouri, Anjali Bouri and Biru Garh as witnesses. He also affirmed that PW-1 X did not state before him that she could recognize the accused with the help of the burning light, but she stated that she could recognize the accused.

ANALYSIS OF EVIDENCE:

20) The evidence of PW-1 clearly depicts that on the midnight of 10-07-16, while she was sleeping with her brother, the accused entered into her house and touched her chest and gagged her and then she woke up. She immediately went to Kalawati's house. Kalawati is her cousin Anukhon Tanti's wife. Her evidence is supported by Kalawati's evidence, who testified as PW-2 that on the midnight of 10-07-16, at about 3:00 am, X came to her house running and woke her up. X was crying and she informed that the accused entered into her house and gagged her. Kalawati's husband Anukhona also testified that in the midnight of 10-07-16, at about 12:00 am, while he was sleeping, X came to his house and informed him that while she and her elder brother were sleeping alone inside their house, the accused came to her house at midnight and touched her chest and gagged her. PW-1, 2 & 3 testified in concert that after the incident, they went to the VDP Secretary's house and informed him about the incident. PW-1 & 4 also stated that on the following day, they accompanied by the victim, Ram Bouri, Laxman Bouri, Bharat Bouri and Anjali Bouri went to the accused person's and confronted him about the incident, but he denied. PW-1, 2 & 4's evidence depicts that X accompanied by her brother Anukan Tanti, later went to the police station and informed the police about the incident. This evidence is also supported and corroborated by the evidence of X's mother Smti. Manjula Tanti as PW-3 that the victim is around sixteen years old and she was not present at the time of the incident in the house, because she stayed separately from her husband. On the following day of the incident, she heard that her daughter had gone to the police station regarding the incident. She came to her house and asked her daughter about the incident and her daughter informed her that the accused entered into her house at 3:00 am midnight and gagged her and touched her chest. The victim's father Anil Karmakar's evidence also supports the evidence of PW-1, 2, 3 & 4. Anil Karmakar's evidence supports the evidenced of PW-1, 2, 3 & 4. He testified as PW-5 that on 10-07-16, at night, he observed a religions function (Tuloni Biya) in his house. On the following morning of the incident, he heard from the family members of X that the accused entered into her house. Later, he learnt that X lodged an ejahar with Borbari Outpost against the accused person. Thus, it is clear that there is clinching evidence that the accused entered into the victim's house.

- 21) Learned defence counsel emphatically submitted in his argument that there was a function in Anil Karmakar's house and the accused was present in Anil Karmakar's house throughout the function. Moreover, the victim's father Anand Tanti was also present in Anil Karmakar's house from the evening till the wee hours of the morning to attend the function. The victim's cross-examination reveals that Gabbar, Sankar, Biru, Sanjay and her father were all present in the function on the night of the incident till the wee hours of the morning. The victim's cousin Anukhon Tanti and host Anil Karmakar testified in cross-examination that the accused was present in the function till the morning.
- 22) Taking a cue from the cross-examination of PW-1, 4 & 5, the learned defence counsel submitted that when the accused was present in the marriage function, it is not possible for him to go to the victim's house to molest her. But in my opinion, the cross-examination of PW- 1 & 4 clearly reveals that the place where the function took place, was near the victim's house and the pandal was stretched over the road between the victim and Anil Karmakar's house. The accused willingly and with ease, crept into the house of the victim to molest her where the function was taking place in the nearby house. No reason is discernible why the victim will run towards her elder brother's house in the middle of the night at about 3:00 am crying for help. The learned defence counsel also laid stress in his argument that the victim stated that she bit the accused on his hand, but no injuries were detected on the accused person's body, as stated by X in her cross-examination. This argument of the learned defence counsel holds no water. The medical officer's evidence reveals that the victim was below seventeen years and above sixteen years of age and no evidence regarding the victim's age was produced. So the benefit of two years on the higher side goes to the accused and the victim is held to be a major and not minor.
- 23) In view of my foregoing discussions, it is thereby held that the accused is not found guilty of the offence under Section 8 of the POCSO Act, but he is held guilty of the offence under Section 354-A IPC by virtue of Section 222(2) CrPC. Although he was not charged under Section 354-A IPC, he is held guilty under Section 354-A (i) IPC.
- 24) It has already been held that there is clinching evidence that the accused molested the victim. The victim identified the accused and there is not even

an iota of doubt that the accused is complicit.

25) Considering the facts and circumstances of this case and age and antecedent of the accused, a lenient, but deterrent punishment is imposed upon the accused.

SENTENCE:

- 26) The accused Sri Mohan Mahali is convicted under Section 354-A (i) IPC and is sentenced to undergo simple imprisonment for 1 ½ months and a fine of Rs. 10,000/- (Rupees Ten thousand) only. The fine realized will be paid as compensation to the victim. The period of detention already undergone by the accused during investigation, and trial is set off with his custodial sentence.
- 27) Furnish free copies of judgment to the accused and to the District Magistrate.

 Judgment is signed, sealed and delivered in the open Court on the 17th day of November, 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. Kalawati Tanti;
- 3. PW-3 Smti. Manjula Tanti;
- 4. PW-4 Sri Anukhon Tanti;
- 5. PW-5 Sri Anil Karmakar;
- 6. PW-6 SI Numal Chandra Bora;
- 7. PW-7 Dr. Ashrulina Deori.

List of Exhibits:

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

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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