

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

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

JUDGMENT IN SPECIAL (POCSO) CASE NO. 13(DH) 2017.

U/s 448 /376 of IPC read with Sec.4 of POCSO Act.

(G.R. Case No.213/2017 (DMJ); Dhemaji P.S. Case No.81/2017 Under Sections-448/376 /506 of IPC.)

The State of Assam

- Versus -

Shri Tenga @ Madhuram SOnowalAccused Person

S/O Tipu Sonowal,
R/O Baligaon,
P.S. Dhemaji,

Committing Magistrate : Shri L.K. Sharmah,
Judicial Magistrate, 1st Class,
Dhemaji.

Appearance:

Shri A. Fogla,
Public ProsecutorFor the State

Shri M. Dihingia, AdvocateFor the Accused

Dates of prosecution evidence : **12-07-2017, 09-08-2017, 06-09-2017,**
01-11-2017 and 12-12-2017.

Date of argument : **25-06-2019.**

Date of Judgment : **16-07-2019.**

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JUDGMENT

1. The prosecution case in brief is that on 19-3-2017 complainant- Shri Achyut Sonowal lodged an ejahar with Dhemaji Police Station alleging interalia that on 13-3-2017 at about 10 PM. at night the accused-Tenga @ Madhuram Sonowal entered into the T.V. Room of the grand-father of the victim (complainant's daughter) Smti 'X' (**real name is withheld**) pretending to watch TV programme , gagged her mouth and committed rape on her. IT is also alleged in the ejahar that the accused threatened the victim if she discloses the matter to anybody else.
2. On receipt of the ejaha, Police registered a case vide Dhemaji P.S. Case No. 81/2017 Under Sections- 448/376/506 of I.P.C. On completion of investigation police submitted Charge-sheet against the accused-Shri Tenga @ Madhuram Sonowal u/s 448/376/506 of I.P.C. read with Sec. 4 of POCSO Act.
3. The case came up before the learned Judicial Magistrate, F.C., Dhemaji and the Ld. Magistrate issued process for appearance of the accused person and on appearance furnished necessary copies to the accused person and committed the case to this Court.
4. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 448/376 of I.P.C. read with Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 8 witnesses. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of total denial. However, defence adduced no evidence in support of his defence.

5. Points for determination :

- (1) That, on 13-3-2017 at night you committed house trespass into the room of Achyut Sonowal with an intention to commit an offence and thereby you committed an offence punishable u/s 448 of I.P.C.

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(2) That, on the same day and time you committed vaginal sexual intercourse with the minor daughter of Achyut Sonowal and thereby you committed an offence punishable u/s 376 IPC read with Sec.4 of the Protection of Children from Sexual Offences Act.

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

Discussion of Evidence :

7. **PW1** the victim- Smti 'X' stated that complainant-Achyut Sonowal is her father. The occurrence took place about 5 months back (from the date of her recording evidence) at night in the house of her grandmother. She was prosecuting studies staying in her grandmother's house. On the day of occurrence she and Dimpul were watching TV. Electric light suddenly went off and Dimpul went home. Though she asked him (accused) to go, but he did not go. At that time she was arranging the chairs in front of the door of her grandmothers' sleeping room. Then the accused gagged her mouth with his hand, put off her panty laid her on the sofa-set, open the chain of his pant and did 'bad act' with her. She gave blow to the accused but he did not leave her. After committing bad act the accused left the place. She slept sweeping. In the morning, she told her aunt about the occurrence. They called the village people. They asked her and the accused but the accused did not admit the fact. Her uncle filed complaint. Police got her medically examined and also got her statement recorded by Magistrate. After committing bad thing with her by the accused, she suffered pain on her abdomen and also suffered urinal problem. She also felt pain on her private part (vagina).

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It is a fact that she did not state before the Magistrate that she suffered abdominal pain, urinal problem and vaginal pain after committing rape on her by the accused. Ext-1 is her statement before the Magistrate and Ext-1(1-2) are her signatures.

In cross-examination PW1 denied the defence suggestion that at the relevant time of occurrence she was above 18 years. She denied that the accused did not commit bad thing with her. It is denied that there was love affairs

between her and the accused. She denied that there was no any village '**Bichar**'. She denied the defence suggestion that her parents tutored her to give statement before Police and Magistrate. She admitted in cross that she was staying in the house of her grand-mother about 5 months ago. Her 'Mamma' and Mummy also stays with her grand-mother. She denied the defence suggestion that she did not state before Police and Magistrate that the accused open the chain of his pant. It is also denied that she did not state before police that though she gave fist-blow to the accused but he did not release her.

8. **PW2 Smti Hemi Sonowal** stated that Complainant-Achyut Sonowal is her brother-in-law. Victim is her niece. She also knows the accused who is from her village. Victim was prosecuting studies staying in the house of her (PW2) mother-in-law. The occurrence took place about 3 months back (from the date of her recording evidence). Her husband's have a vegetable shop at some distance. She and her husband used to stay at night in the said shop-house. She asked the victim one day as to why she was reluctant to go to her school and keeping her silent. Then the victim replied that accused Tenga committed bad thing with her by gagging her mouth and lying her down on the sofa-set. She told about the occurrence to her husband. Her husband beaten her up. She also informed the matter to the parents of the victim. A '**Mel**' was held regarding the matter in the village. Both victim and accused were present in the '**Mel**'. In the '**Mel**' the members present, asked the accused about the incident but, he did not admit the fact of doing bad thing with the victim. Then the members of the '**Mel**', asked them to file case against the accused. Police recorded her statement. At the time of occurrence, the victim was reading in Class-VIII. Her age was about 13 years.

In cross PW2 denied the defence suggestion that she did not know about the occurrence from the victim. There is a boy by name Dimpal who lives in their '**Suburi**'. He used to see T.V. in their original house. She did not state before police that she stated about the occurrence to her husband. She denied the defence suggestion that there was no '**Mel**' in the village. It is also denied that she has given false evidence in favour of the victim.

9. **PW3 Shri Achyut Sonowal** stated that he is the complainant of this case. He knows the accused. Victim is his daughter. The occurrence took place

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after the last Magh Bihu. His brother-in-law Babul Sonowal informed him one day that, the accused Tenga Sonowal did bad act with the victim. Then he asked the victim about the matter. His wife also asked the victim about the occurrence. Then the victim told that, she (victim), Dimpul and Tenga were watching TV. Her grandmother was sleeping. She asked Dimpul and Tenga to go after switching off the TV. Dimpul went but Tenga did not go. Then Tenga did bad act with her gagging her mouth. Then he called the people. The people gathered in the field of the school. Two gaonburhas came there. The victim also went. When the people asked the accused about the occurrence he denied it. Then the matter was not settled in the ***Mel***. The people present in the Mel advised them to file case. He wrote an ejahar through a person and filed at the police station. Police questioned him. Police examined the victim by a Doctor and produced before the Court. After the occurrence, the victim stopped herself to go to her school.

In cross-examination PW5 stated that at the time of occurrence, the victim was reading in Class-IX. HE does not remember the date of birth of the victim. He admitted that the victim once failed in annual examination. He denied the defence suggestion that he did not state before police that on being asked the victim, she stated that she, Dimpal and Tenga were watching TV. His mother was sleeping. She asked Dimpal and Tenga to go after switch off the TV. He did not mention in the ejahar about delay of filing it. He denied that he did not state before police that 2 Gaonburhas were present in the 'Mel'. He and his wife were present in the 'Thana' while the victim was brought to the "thana". Police questioned the victim in uniform. He denied that he has given false evidence against the accused on suspicion that accused committed rape on the victim.

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10. **PW4 Smti Rinkumoni Sonowal** stated that complainant is her elder brother. Victim is her niece i.e. daughter of the complainant. She knows the accused Tenga Sonowal. House of the accused is in the village of her mother. The occurrence took place about 4/5 months back (from the date of her recording evidence). At the time of occurrence, the victim was reading in Class-VIII. Her (victim) school is near the house of her husband. One day the victim came to their house in school time. She took meal in their house. At the time of taking meal, mother of the victim and her '**mummy'** (aunt) came to their house.

The wife of the complainant asked her why the victim came to her (PW4) house. A meeting was called in the village. Then she (PW4) asked what meeting is going to be held. Then she (mother of the victim) told that the accused-Tenga did bad thing with the victim. She (PW4) also went along with them. The meeting was held in the village. She (Pw4) and victim went to the meeting. Accused-Tenga also went there. ON being asked to the victim, she told that accused-Tenga did bad thing with her. The accused opposed it. Then the people present in the meeting advised them to file case.

In cross PW4 denied that the victim stayed a day in their house. She did not ask the victim anything. She denied the defence suggestion that the mother of the victim did not state to her about the occurrence. She denied that she has given evidence in favour of her niece.

11. **PW5 Shri Dimpul Sonowal** stated that the occurrence took place in the month of March/2017 at about 9/10 PM at night. He was watching TV in the house of the victim's maternal uncle. Victim and accused-Tenga were also with him. Victim went to wash her hands and legs at the tube-well and at that moment she started shouting and she came back to the TV room. When he about to leave the house of victim's maternal uncle's house, he noticed that Tenga was trying to commit some bad act with the victim-Smt. 'X'. Then he came out and peep into the room through the hole of the wall and he saw that Tenga was having sexual intercourse with the victim. He waited for some time and with the accused came out and left the place.

In cross-examination PW5 stated that he knows the complainant Achyut Sonowal as 'Mama'. But he is not his blood relation. Today he has come to the court with Achyut Sonowal. PW5 denied that on being tutored by Achyut, he has stated that he saw the accused Tenga having sexual intercourse with the victim. The occurrence took place at about 9 O'Clock and it was dark night. It is also denied that he could not see any incident/occurrence from the outside of the house as there was darkness.

12. **PW6 Shri Prafulla Kardong** stated that the occurrence took place in the month of March/2017. A '**Bichar**' was held in the school field of their village. He

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attended the '**Bichar'**. Victim Smt 'X' and Tenga (accused) were also attended the meeting. The meeting was held to discuss some incident involving Tenga and Smt. 'X'. Then the persons who present in the meeting, asked Tenga (accused) about the occurrence. Tenga told that he along with Dimpul and Smt. 'X' (victim) were watching TV in the house of the victim and he also stated that he did not commit any offence. The villagers also asked Smt. 'X' as to what happened during the night of the alleged incident. But she did not give any reply. Then the villagers asked Dimpul whether he was present at the place of occurrence and saw any incident. Then Dimpul replied that he was watching TV with Tenga and the victim, and victim went to tube-well to wash her hands and legs and then Tenga grabbed her and tried to do bad work, and thereafter victim went inside the house and Dimpul was peeping the room from outside through the hole of the wall and saw them in compromising position.

In cross-examination PW6 stated that the victim did not say anything about the occurrence. As per version of Dimpul, they (victim and accused) were holding each other on a chair.

13. **PW-7 Dr. Pranab Jyoti Dutta** stated that on 19-03-2017 he was posted at Dhemaji Civil Hospital as Sr. M&HO. On that day he examined Smt. 'X' aged 14 years female, ref. PS Case NO.81/17 u/s 448/376/506 of IPC. She was identified and escorted by WPC Indira Gogoi of Dhemaji Police.

Brief History - She attended our hospital with alleged history of sexual assault on 13-03-2017.

Details of Medical examination- All the vitals were normal limits.

Breasts are well developed and no signs of injury. Pubic and axillary hairs are well developed, on parineal examination bleeding was there, hymen was old lacerated, cervix was nulliparous, uterus was normal, her LMP was three days before. On investigation -urine for HCG was negative. Vaginal swab for spermatozoa was nil, on X-Ray for age determination age is above 15 years and below 17 years, USG of pelvic organ- normal.

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Impression- No recent signs of forceful sexual intercourse and age of the lady is above 15 years and below 17 years.

Ext-2 is the Medico-Legal Report and Ext-3(1) is his signature. Ext-3 is the vaginal Swab Examination Report and Urine HCG Test. Ext.3 (1) is the signature of Dr. Jatindra Moran. Ext.4 is the Ultrasonography report. Ext.4(1) is the signature of Dr. Bhupen Kuli. Ext.5 is X-Ray report for age determination. Ext.5(1) is the signature of Dr. Bhupen Kuli which is known to him.

In cross examination PW7 stated that the bleeding continues up to 4/5 days where there is menstruation. He has mentioned the age of the victim on the basis of the report of Radiologist.

14. **PW-8 Tankeswar Gogoi** stated that on 19-03.2017 he was posted at Dhemaji PS as attach officer. On that day O/C Dhemaji PS received an ejahar from Sri Achyut Sonowal. Accordingly, a case being Dhemaji PS Case NO.81/2017 u/s 448/376/506 IPC read with section 4 of POCSO Act was registered. He was entrusted with the investigation for this case. He recorded statement of complainant in the police station. He also recorded statement of the victim Smt. 'X' and got her medically examined. He also produced the victim before Magistrate for recording her statement. Thereafter, he proceeded to the place of occurrence the house of Puniram Sonowal at Baligaon. At the PO he prepared a sketch map. He recorded statement of witnesses at the PO. He arrested the accused and forwarded him to Judicial custody. He also collected medical report. On conclusion of investigation, he submitted charge sheet against the accused Tenga @ Madhuram Sonowal, son of Tipu Sonowal u/s 448/376/506 IPC R/W section 4 of POCSO Act. Ext-6 is the sketch map and Ext-6(1) is his signature. Ext-7 is the Charge-sheet and Ext-7(1) is his signature. Ext-8 is the ejahar and Ext-8(1) is the signature of O/C Lambit Gogoi with note which is known to him.

In cross-examination PW8 stated that the complainant got the information regarding rape on the victim from one Babul Sonowal and then lodged complaint. He has not recorded statement of Babul Sonowal. He has not aware of any village meeting or decision taken in such meeting. At the time of occurrence the victim along with the accused and witness Dimpal Sonowal were watching TV.

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Appreciation of Evidence :

15. From the discussion of the evidence on record it appears that complainant examined himself as PW3 and in his evidence during trial he stated that on the date of occurrence at the relevant time accused Tenga committed rape on his daughter who is aged about 14 years at the time of occurrence. He also stated that his daughter told him that while she along with Dimpal Sonowal (PW5) and the accused was watching TV in the house of her maternal uncle, accused committed rape on her. Victim has been examined as PW1 and she stated that on the date of occurrence at the relevant time she was watching TV at her grandmother's house. Suddenly electric light went off and PW5 left. She asked accused to go home, but he remained there. Further she stated that while she was arranging the chair in the TV room, accused gagged her mouth and removed her clothes and did bad act with her. PW5 testified that on the relevant date and time he was watching TV with accused and the victim. Victim went to have a wash at Tube-well and then he heard her shouting and came back to TV room. When he was about to leave, he noticed that accused Tenga was trying to commit bad act with the accused. Then he peeped in to the room and he saw the accused doing bad act with the victim. PW2 and PW4, are maternal and paternal uncle of the victim respectively. In their evidence they stated that victim told them that accused had committed bad act with her. They also stated that a Mel was held in the village and the matter was brought before the Mel in presence of accused and the victim, but the accused did not admit had been committed the alleged act. They also stated that they advised the victim to lodge complaint before police. PW2 also stated that the victim was reading in class VIII at the time of occurrence. PW6 stated that he attended the Mel / Bichar where the incident involving the accused and the victim was discussed stated that accused Tenga admitted that he was watching TV with the victim and the PW5, but he did not admit that he committed any bad act with the victim.

16. The victim was examined on 19-03-2017 by MO/PW7 and from the report of PW7 it is found that the victim attended hospital with an alleged history of sexual assault on 13-03-2017. It is also seen from his report that the MO did not

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find recent sign of forceful sexual intercourse. The MO also opined that the age of the victim is above 15 years and below 17 years.

17. On careful consideration of the evidence on record it transpires that all the non-official PWs has corroborated the evidence of the victim with respect to the fact that on the relevant date and time the victim stayed in the house of her grandmother and at the relevant time she was watching TV along with PW5 and the accused.

18. The victim categorically stated that the accused removed her panty and had bad act with her. It is also in the evidence of the victim that she suffered pain in her pelvic region and also suffered from urinal problem and felt pain in her private part but she did not state the same before police and magistrate.

19. The victim in her statement u/s 164 Cr.PC before Magistrate made same statement as she has done in her evidence on oath during trial. From her statement u/s 164 Cr.PC it reveals that the victim stated that accused had penetrative sexual intercourse with her.

20. The Id. Counsel for the accused submitted that there are contradiction and discrepancies in the evidence of the PWs including victim. The Id. Counsel for the accused also submitted that in the Mel accused denied having committed any bad act with the victim. It is contended that the evidence on record is not sufficient to prove the alleged offence against the accused.

21. On the other hand the Id. PP submitted that the evidence of the victim and other witnesses is found to be reliable and there is nothing on record to show that the victim has falsely implicated the accused.

22. I have also examined the evidence of PWs in cross examination part. Nothing useful has been elicited from the witnesses including the victim. There is no material discrepancies and contradiction in the evidence of the PWs. In my considered opinion the evidence of the victim inspires confidence.

23. At this stage I may look in to the provisions of penetrative sexual assault as defined u/s 3 of POCSO Act (punishable u/s 4 of POCSO Act)

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Section 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.

24. It may also be mentioned that section 375 IPC (punishable u/s 376 OPC) also speaks of penetrative sexual assault against the will of the victim or with or without consent of the victim under 18 years of age.

Section 29 of POCSO Act says Presumption as to certain offences.—'Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.'

25. In the instant case it is not in dispute that the victim is below 18 years. Adverting to the evidence on record we find that the victim has not in her evidence made statement that accused penetrated his penis into her vagina. Further victim was examined by doctor after about six days after the incident. So I find it difficult to hold that the accused committed penetrative sexual assault.

26. In my considered opinion evidence is not sufficient to establish offence u/s 376 IPC R/W section 4 of POCSO Act.

27. However there is ample evidence on record to show that the accused physically abused the victim and thereby committed sexual assault punishable

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u/s 8 of POCSO Act. I also find that accused committed house trespass punishable u/s 448 IPC.

28. In view of what has been discussed above I find that prosecution has been able to prove offence u/s 448 IPC and u/s 8 of POCSO Act beyond all reasonable doubt.

O R D E R:

29. In the result I find accused **Tenga @ Madhuram Sonowal** guilty u/s 448 IPC and 8 of POCSO Act. Accordingly the accused is convicted thereunder.

30. Heard the accused person on the point of sentence. He submitted that he is the only earning member of his family and pleaded for mercy.

31. Considering all aspect the accused is sentenced to R.I. for 3 (three) years and to pay a fine of Rs.1,000/- (one thousand) i.d. R.I. for another one month u/s 8 of POCSO Act. He is also sentenced to R.I. for 1 (one) year u/s 448 IPC.

32. The substantive sentences shall run concurrently.

33. Set off the period of detention.

34. Issue jail warrant.

35. A free copy of judgment be given to the accused person.

36. A copy of judgement be furnished to the District magistrate u/s 365 Cr.PC.

37. Judgment is pronounced in open Court.

38. Given under my hand and seal of this Court on this the **16th day of July/2019.**

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(S. Das)
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Appendix:

Prosecution Witnesses

- P.W.- 1 - Smti 'X' (victim),
- P.W.-2 - Smt. Hemi Sonowal.
- P.W.-3 - Shri Achyut Sonowal.
- P.W.-4 - Smt. Rinkumoni Sonowal.
- P.W.-5 - Shri Dimpul Sonowal.
- P.W.-6 - Shri Prafulla Kardong.
- P.W.-7 - Dr. Pranab Jyoti Dutta.
- P.W.-8 - Tankeswar Gogoi.

Prosecution Exhibits

- Exhibit-1 - Statement of victim u/s 164 Cr.PC.
- Exhibit 1(1) & 1(2) – are her signatures.
- Exhibit 2 - Medico-Legal Report,
- Exhibit 2(1) - Signature of Dr. Pranab Jyoti Dutta.
- Exhibit 3 - Vaginal Swab and Urine HCG test examination Report.
- Exhibit-3(1) - Signature of Dr. Jatindra Moran.
- Exhibit 4 - Ultrasonography Report.
- Exhibit-4(1) - Signature of Dr. Bhupen Kuli.
- Exhibit 5 - X-Ray Report.
- Exhibit 5 (1) - Signature of Dr. Bhupen Kuli.
- Exhibit 6 - Sketch map.
- Exhibit 6(1) - Signature of Tankeswar Gogoi, IO.
- Exhibit 7 - Charge-sheet
- Exhibit 7 (1) - signature of Tankeswar Gogoi, IO.
- Exhibit 8 - Ejahar
- Exhibit 8 (1) - signature of Lambit Gogoi, OC

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