CAUSE TITLE POCSO Case No. 56/16

Informant: Sri Numal Chandra Dutta,

S/o- Late Budheswar Dutta,

R/o- Kalyan Nagar, PS- Naharkatia, District- Dibrugarh.

Accused: Sri Moti Rajput,

S/o- Late Budhan Rajput, R/o- Hilkachuban, Sasoni,

PS- Naharkatia, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. U Rauth, 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. 56/16 G.R. Case No. 1817/16

> > State of Assam

-Vs-

Sri Moti Rajput

Charges: Under Sections 6 read with Sections 5(j)(ii) & (l) and 376(2)(n) IPC.

Date of evidence on : 29-03-17, 02-06-17, 04-07-17 & 05-08-17.

Date of argument : 05-08-17. Date of Judgment : 05-08-17.

JUDGMENT

- 1) The prosecution case in a nutshell is that the victim X was given shelter in Sri Numal Chandar Dutta's house for four months. On 08-07-16, at about 1:00 pm, the victim complained of stomach ache and so Sri Numal Chandra Dutta (hereinafter the complainant) took the victim to the hospital and after examination, the doctor informed him that the victim was pregnant. When the complainant questioned the victim X about her pregnancy, she informed him that her elder brother Sri Moti Rajput (hereinafter the accused) impregnated her. An ejahar regarding this incident was lodged by the complainant and the police registered the same as Naharkatia PS Case No. 64/16 under Sections 376(2)(f) of the Indian Penal Code (IPC in short) and Section 6 of the Protection of Children from Sexual offences Act, 2012 (POCSO Act in short). SI Soroj Doley was entrusted with the investigation.
- 2) The investigating officer (IO in short) embarked upon the investigation. He forwarded the victim to the Magistrate for recording her statement under

Section 164 of the Code of Criminal Procedure (CrPC in short) and for medical examination. He went to the place of occurrence and prepared a Sketch-Map and recorded the statements of witnesses. On finding prima facie materials, he submitted the Charge-Sheet against the accused under Section 376(2)(f) IPC.

- 3) On appearance of the accused, copies were furnished and as this case is triable by the Sessions Judge, the case was committed to this Court.
- 4) After hearing both the sides, a formal charge under Section 6 read with Sections 5(j)(ii) & (I) and 376(2)(n) IPC was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 5) To substantiate the stance, the prosecution adduced the evidence of four witnesses including the MO. The accused did not tender any evidence in defence. The statement of the accused was recorded under Section 313 CrPC. His plea was of total denial.
- 6) I have heard the arguments forwarded by the learned counsel for both the sides.

POINTS FOR DETERMINATION:

- 1. Whether the accused from the month of November, 2015 committed aggravated sexual assault on the victim X and impregnated her?
- 2. Whether at the same time and place, the accused repeatedly committed rape on the victim X?

DECISION THEREON AND THE REASONS FOR THE DECISION:

7) The complainant Sri Numal Chandra Dutta testified as PW-2 that about a year back, he offered shelter to the victim X. During her stay, the victim informed

them that she was suffering from stomache. His wife Smti. Anima Dutta advised him to take the victim to the hospital for examination. Then he took the victim to Dighalapather State Dispensary. After examination of the victim, the doctor informed him that the victim was pregnant and was carrying for seven months. He went and informed his wife about the victim's pregnancy and his wife asked the victim about the person who impregnated her. Then the victim informed his wife that her elder brother Sri Moti Rajput impregnated her. They querried the victim about her elder brother and the victim informed them that her brother works at a nearby Dhaba. Then, he called the accused and asked him in the victim's presence about her pregnancy and asked the accused to take charge of the victim. The accused refused to take custody of his younger sister. Then he lodged an ejahar with the police. Ext. 1 is the ejahar and Ext. 1(1) is his signature.

- 8) Similarly, his wife Smti. Anima Dutta testified as PW-1 that the victim was given shelter in their house as her mother was insane and her father was dead. The victim started staying in their house from the month of March, 2016. After four months, the victim complained of stomache. So she sent the victim to the hospital and the doctor examined the victim and informed her husband that the victim was seven months pregnant. She asked the victim about the person who impregnated her and the victim revealed before them that her elder brother impregnated her and so they informed the incident to the police. The victim who was forwarded to the Nagaon State Home for Women was blessed with a daughter. The State Home informed them that the victim was blessed with a daughter.
- 9) Contrary to this, the victim testified as PW-3 that the accused is her elder brother. Her father is no more and her mother is mentally ill. The incident

took place about more than a month ago. During the time of Janmastami, she went to the Namghar. When she came out to answer nature's call outside the Namghar during Janmastami festival, she was sexually assaulted by five unknown miscreants. There were five boys who committed rape on her, but she could not identify them as they had their faces covered. When she tried to raise alarm, the miscreants gagged her. There was bleeding from her private part as she was injured by the assault. The miscreants also groped her and bit on her breast. The miscreants threatened her not to disclose about the incident to anybody, lest, she will be killed. They also threatened her to set their house ablaze and also kill her family members. When she returned home from the Namghar, she did not inform the incident to anybody. After one day, she went to the complainant's house to work as a domestic help. Meanwhile, she became pregnant and her body started showing signs of pregnancy due to her swollen abdomen. She started missing her menstrual periods and then she was taken to the hospital by the complainant. She discovered that she was pregnant. After the complainant brought her back to the house, he informed his wife about her pregnancy. The complainant's wife exercised pressure upon her to reveal the name of the person who impregnated her and she falsely implicated her elder brother, because she was assaulted and slapped by the complainant's wife. Then the complainant called her elder brother and informed him about the pregnancy and lodged a case against her elder brother. Police recorded her statement and forwarded her to the Magistrate for recording her statement. The police also forwarded her to the doctor for medical examination. She gave birth to a baby in the Nagaon State Home and the baby was given in adoption.

10) Although this case is against the accused person, yet the victim's omission to

implicate that the accused is complicit makes a dent in the evidence. The medical officer's evidence as PW-4 clearly depicts that the victim was pregnant and carrying for 29 weeks and 5 days. She examined the victim on 11-07-16 and the case was lodged against the accused on 09-07-16. The victim was given shelter in the complainant's house, but at that time, she was already pregnant and was carrying for 29 weeks. The Medical Report reveals that the victim was a major at the time of the incident and she was about 18 years. Both the complainant and his wife have implicated that the accused impregnated the victim, but the victim testified as PW-3 that five unknown miscreants committed rape on her. By such testimony, the victim tried to imply that she became pregnant because she was sexually assaulted by five unknown persons. She further testified as PW-3 that when the complainant's wife PW-1 exercised pressure on her and slapped her, then she falsely implicated her brother. Thus this case against the accused falls through. When the victim herself failed to implicate that the accused is complicit, this case is without a substratum. The benefit of doubt goes to the accused person. It is thereby held that the prosecution failed to prove beyond a reasonable doubt that the accused committed aggravated penetrative sexual assault upon the victim by repeatedly assaulting her sexually being her elder brother and being in a formidable position. Moreover, the Medical Report reveals that the victim was above 18 years. The prosecution also failed to prove beyond all reasonable doubt that the accused repeatedly committed rape on the victim, because the victim herself did not implicate that the accused is complicit. Thereby the accused is not held quilty of the offence under Section 376(2).

11) In view of my foregoing discussions, the accused is acquitted from the

charges under Sections 6 read with Sections 5(j)(ii) & (I) and 376(2)(n) IPC and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 5^{th} day of August, 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 Smti. Anima Dutta;
- 2. PW- Sri Numal Chandra Dutta;
- 3. The victim X; and
- 4. PW- Dr. Nibedita Shyam.

List of Exhibits:

- 1. Ext. 1 Ejahar; and
- 2. Ext. 2 Medico-legal Report.

List of witnesses and Exhibits for defence- None

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

Sessions Judge, Dibrugarh