#### IN THE COURT OF ADDITIONAL SESSIONS JUDGE, **BISWANATH CHARIALI**

## SONITPUR, ASSAM

#### Spl. (POCSO) Case No. 18/2016

u/s 8 POCSO Act, 2012

State of Assam

-VS-

Sri Dipak Baruah

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P.

For the defence

: Mr. P. Borah, learned Advocate

Dates of recording Evidence: 10.08.2017, 05.01.2018, 16.05.2018, 21.06.2018,

06.09.2018.

Date of Argument

: 14.03.2019.

Date of Judgment

: 28.03.2019.

### JUDGMENT

1. The prosecution case in brief is that on 22.10.2016 the informant namely, Sri Guluk Neog lodged an FIR with the IC, Ghahigaon Police Outpost under Gohpur PS stating inter alia that the accused used to work with him as a handyman of the vehicle driven by him. He alleged that on 18.10.2016 he allowed the accused to stay in his house and to sleep with his 12 year old son (name is withheld). According to him, the accused on the said night forcibly did 'beya kam' (bad work) with his son and asked him not to disclose about the same to anyone else. However, on 21.10.2016 as his son faced difficulty in excretion, they

Addl. Sessions Judge could know about the said occurrence from the victim.

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2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge shoot services in Act. The accused in due course appeared before this Court to face trial. The copies of the relevant documents were furnished to him. Upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused had committed an offence u/s 8 of the POCSO Act, the charge was accordingly framed against him, which on being read over and

explained, he pleaded not guilty.

3. During trial, the prosecution examined seven witnesses in all including the Medical Officer and the Investigating as PW 6 and PW 7 respectively. The accused was thereafter examined u/s 313 CrPC. His plea was of total denial. He refused to adduce any evidence on his behalf. The case was thereafter argued by both the sides.

## **Points for determination**

Whether the accused on the night of the alleged occurrence committed sexual assault on the said victim, who is below the age of 18 years?

### Discussion, Decision and Reasons thereof

- 4. PW 5 is the victim. He stated that the incident took place on the Kati Bihu night in the month of October, 2016. He stated that on that night the accused came along with his father to their house. After having the night's meal, the accused was allowed to sleep with him on the same bed. After some time, the accused after counting his money pushed into his hand a ten rupee note. The accused made the victim to touch his private organ by hand. The accused pushed inside his organ into his anus. The PW5 stated that when he tried to call his mother, the accused showed him a knife. On the next day as he could not defecate due to pain, he told his mother (PW1) about the incident at night. His mother then informed about the matter to his father when he returned at night from his work. His father informed about the incident to an uncle nearby, who called the VDP and they informed the police. He was medically examined and his statement was recorded u/s 164 CrPC- Ext.2 during investigation of the case.
- 5. Let us now turn to the evidence of the Medical Officer, PW6 Dr. Basanta Kandali to find out the nature of injury sustained by the victim in the alleged incident and to find out as to whether his evidence is in consonance with the extent of injury he had sustained. The PW6 had examined the victim on 22.10.2016, i.e., after more than three days from the date of the alleged occurrence as the alleged incident according to the FIR- Ext.1 took place on the night of 18.10.2016. Proving the medical examination report of the victim as xt.3, the PW6 stated that the victim is 12 years old at that relevant time. He noted the history of alleged assault, which according to him took place on 17.10.2016. The date therefore is not in consonance with the date of occurrence as mentioned in the Ext.1. He further stated that he did not find any external injury on the person of the victim.
- 6. Now again we return back to the evidence of the victim, PW5. PW5 informed about the incident to his mother on the next day at night, after he felt pain while excretion. This shows that he informed his mother on the night of 19.10.2016 and on the same night, his mother informed his father. Ext.1 shows that the FIR was lodged on 22.10.2016. There is



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no explanation as to why the father of the victim took time from the night of 19.10.2016 till 22.10.2016 to file the FIR. Again as we scrutinize the Ext.1, we find the informant stating therein that as the victim found it difficulty in defecation on 21.10.2016, he had lodged the FIR. As per the Ext.1, the incident took place on the night of 18.10.2016 and the victim found difficulty in defecation on 21.10.2016, which however does not reconcile with the evidence of PW5 adduced by him in that regard. PW5 stated that as he found difficulty in excretion, he told his mother on the next night.

- 7. Further, PW5 is found to have stated that the accused had pushed his private organ inside his anus for which he could not defecate. The PW5, as noted above, did not find any external injury on the person of the victim. Had there been any injury in his anus of the nature for which he was unable to defecate, there should have at least some minor tenderness or redness on the mouth of the anus but the PW6 did not find any.
- 8. PW1, Smti Joonmaoni Neog, the mother of the victim stated that the incident took place on the night of 17.10.2016, which is again is not in conformity with the date of occurrence as mentioned in the FIR- Ext.1. According to her, her son told her about the incident after three days, i.e., on 20.10.2016, which again, as noted above, is in contradiction with the evidence of the victim, PW5. She stated that on 22.10.2016, when the accused came to their house, seeing him, her husband called the villagers and police. We notice that the evidence of PW1 is not in conformity with the prosecution case with regard to the date of occurrence. Moreover, her evidence does not reconcile with the evidence of PW5.
- 9. PW2 Diganta Handique could learn about the occurrence from the PW1. According to him, the incident took place on the night of 17.10.2016.
- 10. PW3, the informant contradicted PW1, PW2 and PW6 and stated that the incident took place on the night of 18.10.2016. He stated that the victim had told his wife about the occurrence on 21.06.2016 and on the next date he lodged the Ext.1.
- 11. We therefore notice inconsistencies between the vital witnesses as already discussed with regard to the alleged date of occurrence, which make the prosecution case weak and therefore unreliable.
- 12. PW4 Hemanta Rajbangshi had heard about the incident on 22.10.2016 from the PW3 over phone. PW7- the Investigating Officer, Sri Dipak Baishya stated in his cross that the informant did not disclose before him of the reasons for lodging the FIR after four days of occurrence.
- 13. Thus from the evidence of witnesses, more particularly, from the inconsistent evidence of the alleged victim- PW5, his parents- PW1 and PW3 and the Medical Officer- PW6, we do not find credible evidence against the accused person to convict him on the offence charged against him. The prosecution has failed to prove its case. As such I acquit the accused from the offence charged against him and set him liberty forthwith. The provision

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Spl. (POCSO) Case No. 18/2016 of Sec. 437-A CrPC is not complied with after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 28th day of March, 2019.



Special Judge, Biswanath Chariali, Sonitpur, Assam.

> Addl. Sessions Judge Biswanath Chariali, Sonitpur

## **ANNEXURE**

## Witnesses examined by the Prosecution:

PW1- Smti Joonmani Neog

PW2- Sri Diganta Handique

PW3- Guluk Neog

PW4- Sri Hemanta Rajbangshi

PW5- Victim

PW6- Dr. Basanta Kandali (M.O.)

PW7- Sri Dipak Baishya (I.O.)



# **Exhibits proved by the prosecution witnesses:**

Ext.1- FIR

Ext.2: Statement of the victim u/s 164 CrPC

Ext.3: Medical Injury Report

Ext.3: (Marked again by prosecution) Sketch Map

Ext.4: Age Certificate of victim

Ext.5: Charge sheet

# Witnesses examined by the Defence:

None.

# **Documents exhibited by the Defence:**

None.

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