# IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

PRESENT: Sri A.Bhattacharyya, A.J.S.,

Sessions Judge. Darrang, Mangaldai.

# Spl(POCSO) No.7 of 2016

(U/S: 376(2)(i)/324 I.P.C. R/W Sec. 4 of POCSO Act).

State Versus

Sri Jiten Das, S/O Sri Nripen Das Vill- No.2 Ghatarag chapori, P.S.- Mangaldai, Dist-Darrang(Assam)

--Accused.

### **APPERANCE:**

For the Prosecution: Sri Premeswar Sarma, P.P., Mangaldai

AND

For the accused : Mirja Gias, Advocate.

Evidence recorded on: 16/11/16, 23/12/16, 06/01/17, 20/01/17,

03/03/17, 13/07/2017,18/08/17,18/09/17

Argument heard on : 31/03/2018.

Judgment delivered on: 12/04/2018.

#### JUDGMENT:

- 1. One Sri Ram Chandra Das vide an ejahar dated 01/02/2015 states before the Sipajhar Police Station that on 01/02/2015 at about 12 noon his daughter namely Miss X(victim) aged about 11 years was returning from the house of his in-laws through the bank of river. It is alleged that on her way the accused suddenly covered her mouth and dragged her to the nearby maize plantation, wherein the accused laid her on the ground and forcefully caused sexual intercourse with her. Also the accused bite on her face.
- 2. Sipajhar Police Station on registration of a case took up the same for investigation and at the Conclusion of the investigation laid the charge sheet U/S 376 I.P.C. read with Section 6 of POCSO Act.
- 3. On being forwarded the case record by the learned Judicial Magistrate First Class, Darrang, Mangaldai and on appearance of the accused the charges U/S 376(2) (i)/324 I.P.C. read with Section 4 of POCSO Act are framed against the accused. Charges so framed are read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 4. During trial, the prosecution side after examining as many as 12(twelve) PWs closed their side. The statement of the accused U/S 313 Cr.P.C. is recorded. The accused declined to adduce evidence.
- 5. I heard the arguments of the case from both the parties.
- 6. Now the point for determination in this case will be as to:
  - (i) Whether the material particulars surfaced in the testimonies of the PWs during trial are sufficient enough to convict the accused under the offences charged of, or not?

### **DECISION AND REASONS THEREOF:**

- 7. To address the aforesaid point for determination let us have a look at the evidences on record.
- 8. PW1 Badiur Rahman @ Marisika being the ejahar writer during trial and in his examination-in-chief states as follows:
  - "On 01/02/15 he has written an FIR on being asked by Ram Ch. Das. He has read over the contents of the FIR after writing the same and he knowing the same has

put his signature in the FIR. He has also put his signature as a writer of the FIR. Ext.1 is the FIR, Ext.1(1) is his signature as writer."

9. PW2 Sri Ram Ch.Das being the informant and father of the victim during trial and in his examination in chief states as follows:

"On 01/02/15 his minor daughter Miss X(victim) aged about 11 years was returning home after giving milk in the house of his father-in-law situated at village Sonaribasti. While his daughter was returning by the river bank the accused Jiten Das by gagging her mouth dragged her to the nearby maize field and committed rape upon her. His daughter also sustained injury on her face and neck due to biting by the accused person. After the incident she somehow came towards his home and before reaching home fell on the ground due to injury. After hearing hue and cry he along with his wife Kalidasi Das went there. At that time his daughter told them about the incident. They first took their daughter to Gurukhuti hospital, but doctor through one Ambulance sent them to Sipajhar P.S. He lodged the FIR there and Police sent them to Mangaldai Hospital. The FIR was written by one person namely Marisika and he read over the contents of the FIR and thereafter he put his signature in the FIR. Ext.1(2) is his signature."

10. During cross examination he states as follows:

"His victim daughter was born in the year 2003. However, he has not furnished any document regarding her age proof to the Police. The incident occurred on a Sunday on 01/02/2015. The distance between his home and the home of maternal uncle of the victim girl is about one and half( 1 ½) K.M. He visited the place of occurrence after Police visited the same. The distance to the place of occurrence from his home is about 500 metres. Mamoni, Purnima, Sabitri, Durga and his family members went to the place where his daughter fell after coming out from the place of occurrence. He has seen injury on the neck and face of his daughter."

11. PW3 Miss X being the victim during trial and in her examination-in-chief states as follows:

,, At the time of occurrence he was aged about 11 years. The incident occurred on 01/02/15. On that day while she was returning from the house of her maternal uncle after giving milk, the accused Jiten Das caught her in the maize field,

gagged her mouth , removed her pent, put her on the ground and committed rape upon her. She could not shout as her mouth was gagged . Only after being released by the accused she could run towards her home. Her father and mother poured water upon her head. She was taken to Gurukhuti hospital. From there she was taken to Sipajhar Police Station and thereafter brought to Mangaldai Hospital. Police has produced her before the Magistrate to record her statement. Ext.2 is her 164 Cr.P.C. statement, ext.2(1) to 2(3) are her signatures. She was medically examined. She had narrated the incident to her parents. She knows the accused Jiten Das who resides in their same village. During the incident she sustained injury on her cheek as the accused bitted her. She also sustained injury on her private part(vagina)."

## 12. During cross examination, she states as follows:

"After her recovery her parents has directly brought her to Sipajhar PS. After the incident she came to her home and while she was sitting her parents poured water upon her and then she narrated the incident. It is a fact that in her 164 Cr.P.C. statement she has stated before the Magistrate that " she was put on the ground , then he put her skirt upward, removed her panty. Thereafter the accused inserted his penis into her anus ". This is the incident what happened on that day. During the incident blood has not oozed out from any part of her body."

### 13. PW4 Kalidasi Das during trial and in her examination-in-chief states as follows:

"She knows accused Jiten Das. The victim girl is her daughter. The incident occurred about two years ago. On the day of occurrence while her daughter was returning home after giving milk in the house of the maternal uncle near the maize field the accused Jiten Das grabbed her and committed sexual intercourse with her through anus. She was told by her daughter about the same. She has seen the private part(anus) of her daughter and found the same radish in colour. Her daughter reached home only after being released by the accused. After the incident her daughter while coming towards home fell unconscious on the road. She and her husband poured water upon her and brought her to home. At the time of incident the age of her daughter was about 11 years."

### 14. During cross examination, she states as follows:

'Police recorded her statement. In her 161 Cr.P.C. statement she has not stated that her daughter before reaching home fell unconscious and thereafter her father brought her to home. At the time of incident she along with her husband was at their home. After being told about the incident by her daughter her father lodged the case. Apart from the fact stated by her daughter she does not know any other fact about the case. In her 161 Cr.P.C. statement she has not stated that the accused person committed sexual intercourse through anus with the victim. In her 161 Cr.P.C. statement she has not stated that she has examined the anus of her daughter. He was married about 22 years ago. The victim is her third issue. Her eldest issue is presently 18 years of age."

- 15. PW5 Sri Binanda Das during trial and in his examination in chief states as follows: 
  'He knows accused Jiten Das. He also knows the victim girl. About two years ago he went to the village Ghataraag along with Police. On that day the accused Jiten Das has committed rape upon the victim in the maize field near the river bank. 
  The victim girl is the daughter of her sister and she told that the accused committed rape on her anus. He has brought her to Sipajhar hospital along with her father and others. At the time of occurrence the victim girl was aged about 11 years."
- 16. During cross examination, he states as follows:
  - "Police recorded his statement. In his 161 Cr.P.C. statement he has not stated that he went to the place of occurrence along with Police and that the accused committed rape upon the victim through her anus. There is a road near the maize field which was used for to and from by the local people. At the time of occurrence he was on the other side of the road. He cannot say the year of birth of the victim. He reached the place of occurrence after the incident."
- 17. PW6 Smti. Sabya Sarkar was declared hostile during trial. Her deposition recorded before she was declared hostile is as follows:
  - "She knows accused Jiten Das . She also knows the victim girl who resides near her home. About more than one and half years ago at about 12 noon the victim girl while coming fell on the road in front of their home. She went there and the

parents of the victim girl also came there. Her mother poured some water upon her. Thereafter she was taken to the hospital."

18. PW7 Dr. Mrs. Elora Choudhury who examined the victim during trial and in her examination-in-chief states as follows:

"On 01/02/15 she was at Mangaldai Civil Hospital as Senior medical and Health Officer. On that day at 3-45 p.m. she examined one girl named Miss X(victim) aged 11 years D/O Ram Charan Das of village No.2 Ghatara chapori, PS- Sipajhar, the case was accompanied by WPC /266 Rupali Baishya. The girl was examined in presence of ANM Mira Dutta. She complained of sexual assault on 1/02/15 at 12 noon and found the following:

**On physical examination**: Height 130 cm, weight: 30 KGs, teeth: 12/12, auxiliary hair: absent, pubic hair absent, breast not well developed, vulva, uterus-no abnormality detected. In the vagina white discharge present, Labia, minora, mazora – no abnormality detected. Puberty not attained till 01.02.15. On physical examination: only positive finding; single bite mark in right cheek, bite mark was red and tender. No injury mark detected in her private body parts. Mental condition- normal. Vaginal swab sent for spermatozoa examination done at Mangaldai Civil hospital and report shows negative. X-ray for age determination done at Radhika X-ray centre. Approximate age 12 to 14 years, report enclosed. Remarks:

- 1)No comment could be given r3egarding recent sexual assault,
- 2) No injury in her private body parts
- 3) Mental condition stable;
- 4)Approximate age 12 to 14 years.

She has examined the anus of the victim, but the same is not mentioned in her report. Ext.3 is her report, and ext.3(1) is her signature. If any intercourse is done through it is termed as unnatural intercourse.

19. During cross examination, she states as follows:

'Before examining any rape victim they asked the victim about the history of assault. While conducting physical examination they examined the whole body including anus. Generally negative findings are not mentioned in the report. She

has sent with her report the X-ray and report of vaginal swab examination, but she has not seen the same today with her report. As the victim has not attained puberty if she is sexually assaulted there would definitely be injury in her private part."

20. PW8 Sarat Ch.Tumung during trial and in his examination-in-chief states as follows:

"On 01/02/15 she was working as the Second Officer at Sipajhar P.S. On that day one Ramchandra Das lodged an FIR before the O/C, Sipajhar P.S. Pursuant to that FIR the O/C registered a case vide Sipajhar PS case No.59/15 U/S 376 IPC read with Section 6 of POCSO Act and endorsed his name for investigation into it. During investigation, he recorded the statement of the witnesses U/S 161 Cr.P.C. including the statement of the victim. He also recorded the statement of the victim U/S 164 Cr.P.C. before a Magistrate and also sent the victim for medical examination. He prepared a sketch map of the place of occurrence. In the midst of the investigation it came to light that the place of occurrence falls within the jurisdiction of Mangaldai P.S. and as such after discussion with the O/C of Sipajhar PS he prepared a subsidiary case diary and sent the same to the O/C, Mangaldai P.S. for taking necessary step in that regard as per law. Ext.1(3) is the signature of the then O/C of Sipajhar P.S. Abdus Samad along with his note in Ext.1 which is known to him. Ext.4 is the sketch map."

21. During cross-examination, he states as follows:

"When she reached the place of occurrence he did not take the victim to the place of occurrence. The place of occurrence was shown to him by the witness Binanda das who belongs to another village. As per sketch map the place of occurrence is a maize cultivation, but he has not specifically shown the drawing of picture of maize in the sketch map. There is a small village path near the place of occurrence trhough which people and animals travelled and this place as shown in the sketch map is also a maize cultivation. There are several small paths surrounding the maize cultivation field through which village people as well as animals travel."

22. PW9 Shri Khitish Deka during trial and in his examination-in-chief states as follows:

"On 20/03/2015 she was working as Attached Officer at Sipajhar P.S. On that day the O/C, Mangaldai P.S. having received a case vide Sipajhar PS case No.59/15 attached him for investigation of the case after registration as mangaldai PS case No.221/15 U/S 376 IPC and endorsed him to investigate the case. As Mangaldai P.S. has the jurisdiction of that case which was registered at Sipajhar PS as such the case was sent back to Mangaldai P.S. for further investigation of the case. But immediately after taking over the investigation of the case he was transferred from Mangaldai P.S. and as such, he could not conduct any investigation of the case and hence the same was handed over to the O/C, Mangaldai P.S. for necessary action. Ext.1(4) is the signature of O/C, Lohit Ch.Deka of Mangaldai P.S. which is known to him."

23. PW10 Rajen Deka during trial and in his examination-in-chief states as follows:

"On 18/07/15 he was working as Second Officer at Mangaldai P.S. On that day the O/C, Mangaldai P.S. entrusted him to investigate the mangaldai PS case No.221/15 U/S 376 IPC read with Section 6 of POCSO Act which was earlier investigated by S.I. Khitish deka. The earlier S.I. Khitish Deka handed over the CD to the O/C, Mangaldai P.S. on being transferred to another Police Station. On receipt of the CD and after reading the same, he collected the medical report of the victim and also examined two other witnesses U/S 161 Cr.P.C. On completion of investigation he laid the charge sheet against the accused Jiten Das U/S 376 IPC, read with Section 6 of POCSO Act. Ext.5 is the charge sheet, Ext.5(1) is his signature.Ext.5(2) is the signature of the O/C Lohit Rava, Ext.5(3) is the signature of Suman Chakraborty, Additional S.P., Darrang which he knows."

24. During cross examination, he states as follows:

"The accused surrendered before the Police station on 21/06/2016. On that day, he recorded the statement of the accused person. he has recorded the statement of Ganga Das and Adhir Das U/S 161 Cr.P.C."

25. PW11 Ganga Das during trial and in his examination-in-chief states as follows:

" He knows the accused. The incident occurred about two years ago. The occurrence took place during day time at about 12.30 p.m. At that time he was taking bath in a nearby river. At that time he saw the accused and the victim

walking along hand in hand by the side of the river. Except this he did not see anything."

26. During cross examination, he states as follows:

"On the day of occurrence while he was bathing in the river the accused was also on the bank of the river alone. Thereafter, he saw the victim who came to join the accused after crossing a small rivulet. Thereafter, both the accused and the victim went along from the place of occurrence together. Prior to the incident the accused had love affair with the victim."

- 27. PW12 Adhir Ch.Das during trial and in his examination-in-chief states as follows: 
  "He knows the accused. The informant is also known to him. The incident occurred about 1 ½ years at about 12 noon. At that time he was near the river for bathing. At that time, he saw the accused and the victim, who were strolling together along with the bank of the river."
- 28. During cross examination, he states as follows:

  'He did not witness any incident except seeing the victim and the accused strolling by the bank of the river together."
- 29. So, these are all about the evidences on record.
- 30. On a minute perusal of the entire evidences on record, it appears that here in this case PW1 is the ejahar writer and he wrote out the ejahar on being told by the informant about the incident. PW2 being the informant came to know about the incident from the victim. PW3 is the victim of the incident who during examination-in-chief narrated all about the incident. PW4 being the mother of the victim also came to know about the incident from the victim herself. She had inspected the private part of the victim and found the same radish in colour. PW5 came to know about the incident. PW6 was declared hostile.
- 31. PW7 is the Medical Officer, who examined the victim. During physical examination, she found single bite mark on the right cheek of the victim. The same was red in colour and tender. Further, she did not find injury in her private part including her anus.
- 32. PW8 is the I.O. of the case whose evidences are record only. PW9 is another Police Official, whose evidences are also matter of record only. PW10 being the

Police Officer, who laid the charge sheet in this case. PW11 being the independent witness stated during trial that on the date of incident and at the relevant point of time he found the accused and the victim on the bank of river and they were walking. PW12 being another independent witness has deposed in the same tune as that of PW11.

- 33. From a minute perusal of the discussion of the evidences of witnesses as narrated herein before, it is revealed that on the date of incident and at the relevant point of time two persons namely Ganga Das(PW11) and Adhir Ch.Das(PW12) found the accused and the victim on the bank of the river. The story of the victim is that while she was returning from the house of her maternal uncle, the accused Jiten das caught her and took her to the maize field, gagged her mouth, removed her pant, also laid her on the ground and committed rape on her. The incident had taken place on 01/02/15 and on the same date itself she (victim) was medically examined by the PW7. However, during medical examination, PW7 found one single bite mark on the right cheek of the victim Excepting the aforesaid injury, she did not find any injury mark on her private parts including the anus. The victim was produced before the Magistrate and her statement was recorded U/S 164 Cr.P.C. which is exhibited as Ext.2. The same shows that the victim has narrated about the incident in the same tune as she deposed before the Court. Further, she stated that the accused inserted his penis on her anus. But the medical Officer vide Ext.2 did not find any injury on her private part including her anus.
- 34. Considering the aforesaid facts and circumstances as there are no materials to show evidence of penetration either in the private part of the victim or on her anus, therefore, it cannot be observed that the essential ingredients of Section 376 I.P.C. has been made out in this case. But the materials surfaced in the testimonies of the victim and other PWs including the independent witnesses and the Doctor, it is revealed that on the date of incident the accused had touched the body of the victim, bite her on her cheek also had shown his penis to victim. The aforesaid story of the prosecution has remained undemolished and unshaken and the same inspires confidence. The aforesaid acts of the accused can not bring him

under the category of offences under penetrative sexual assault U/S 3 of POCSO Act. However, the materials , which had surfaced in the form of cogent and unequivocal evidences are within the category of sexual assault as the accused on the date of incident with sexual intention touched the anus and other parts of the body such as ckeek, neck also had shown his penis to the victim. Therefore, it can be concluded that on the date of incident it is the accused who sexually assaulted the victim without penetration inasmuch as on that date the victim was a child and did not even attain the puberty as revealed from the medical evidences. This apart, on the date of incident the approximate age of the victim was 12 to 14 years.

- 35. Considering the aforesaid facts and circumstances, it can be concluded unhesitantly that here in this case the offence of sexual assault U/S 8 of POCSO Act has been established beyond all reasonable doubts and the accused is liable to be convicted U/S 8 of POCSO Act.
- 36. In the result, the charge U/S 376(2)(i)/324 IPC read with Section 4 of POCSO Act has not been made out. However, the charge U/S 8 of POCSO Act has been established and accordingly, the accused is convicted thereunder.

Dictated and corrected by me:

(A.Bhattacharyya) Sessions Judge, Darrang, Mangaldai.

Sessions Judge, Darrang, Mangaldai.

- 37. Heard the accused on the sentence. During hearing the accused submits that he has a family consisting of his parents, younger sisters and younger brother. His father is a fisherman and he is also a daily wage earner. The entire family is dependant upon him and if at this stage he is sent to jail the entire family shall have to stary. Therefore, so far sentence is concerned, it is submitted that the same may be dealt with leinently.
- 38. I have carefully considered the aforesaid submission rendered by the accused during hearing in the light of the entire facts and circumstances of the case. Considering the manner of the offences committed by the accused, so also the evidences so far surfaced against the accused, I think the following sentence would meet the ends of justice.
- 39. Accordingly, the accused Sri Jiten Das is convicted U/S 8 of POCSO Act and sentenced to suffer Rigorous Imprisonment of 4(four) years and to pay a fine of Rs. 5000/-(Rupees five thousand), in default of payment of fine to suffer S.I. of 6(six) months U/S 8 of POCSO Act.
- 40. Further, the victim is recommended for compensation U/S 357(A) Cr.P.C. read with Assam Victims Compensation Scheme. The District Legal Services Authority, Darrang, Mangaldai will provide the same to the victim from the Victim Compensation fund in accordance with law.
- 41. It is also ordered that period of jail detention, if any undergone by the convict during the period of investigation, inquiry or trial shall be set off U/S 428 Cr.P.C. against the terms of imprisonment imposed on him.
- 42. Send the convict/accused to jail to serve out the sentence. His bail bond stands discharged and the surety is set aside.
- 43. Let a copy of the judgment free of cost be furnished to the convict forthwith.
- 44. Let another copy of judgment be furnished to the District Magistrate, Darrang U/S 365 Cr.P.C.
- 45. A copy of the judgment and order also be forwarded to the Secretary, District Legal Services Authority, Darrang, Mangaldai to do the needful as ordered herein before.

46. The convict is informed about his right of appeal against the judgment and order of conviction and sentence.

Judgment is delivered in the open Court and given under my hand and seal of this court this 12<sup>th</sup> day of April,2018.

Dictated and corrected by me and each page bears my signatures.

(A.Bhattacharyya) Sessions Judge, Darrang,Mangaldai.

Sessions Judge, Darrang, Mangaldai.

### **APPENDIX**

A)Prosecution Witnesses:

i)PW1 Badiur Rahman

ii)PW2Sri Ram Ch.Das

iii)PW3 Nirmali Das

iv)PW4 Kalidasi Das

v)PW5 Binanda Das

vi)PW6 Sabya Sarkar

vii)PW7 Dr.Mrs. Elora Choudhury

viii)PW8 Sarat Ch. Tumung

ix)PW9 Khitish Deka

x)PW10 Rajen Deka

xi)PW11 Ganga Das

xii)PW12 Adhir Ch.Das.

B) Defence witness: Nil.

# C)Exhibits:

i)Ext.1 FIR

ii)Ext.2 statement U/S 164 Cr.P.C.

iii)Ext.3 medical report

iv)Ext.4 Sketch map

v)Ext.5 charge sheet

Sessions Judge, Darrang, Mangaldai.