#### Spl. POCSO Case No. 01/2017

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

#### SONITPUR, ASSAM

# Spl POCSO Case No. 01/2017

u/s 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Ripun Borah

..... Accused person

Present:

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

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

#### Committed by:

Learned SDJM(M), Gohpur

#### Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P For the defence : Mr. R.K. Sharma, learned Advocate.

Dates of recording Evidence: 27.06.2018, 22.01.2019.

Date of Argument

: 22.01.2019.

Date of Judgment

: 22.01.2019.

#### JUDGMENT

1. The prosecution case in brief is that on 07.01.2017 the informant namely, Smti Junmoni Borkataki lodged an FIR with the OC Gohpur PS stating inter alia that on the same day at about 3 PM, the accused taking advantage of her absence in her house, tried to commit rape on her 12 year old daughter (name is withheld) by tearing off her garments. As her daughter raised alarm, the accused fled from the place of occurrence.

Receiving the same, the police registered a case and investigated the matter. After investigation the police submitted charge-sheet against the accused u/s 8 of POCSO Act. The accused in due course appeared before this Court to face trial. Copies of the relevant documents were furnished to him. After 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 committed an offence u/s 8 of POCSO Act, the charge was accordingly framed against him, which on being read over and explained, the

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accused pleaded not guilty.

3. As the accused faced trial from custody and had expressed his inability to engage a counsel of his choice to defend him, the learned defence counsel, whose name appeared in the panel made for Legal Aid Counsel, was appointed to defend the accused at the expense of the State. During trial, the prosecution examined five witnesses in all including the alleged victim as PW 2. Looking into the evidence as adduced by these witnesses including the evidence of the alleged victim-PW 2, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Taking note of the materials on record, the prosecution evidence was closed. The accused was thereafter examined u/s 313 CrPC. His plea was total denial. He refused to any evidence on his behalf. The case was thereafter argued by both the sides.

# SONITPUR SONITPUR

#### **Points for determination**

Whether the accused on the day 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 1 is the informant Smti Junmoni Borkataki. She stated that the incident took place on 07.01.2016 at about 3 PM. According to her, at that relevant time she was along with the victim in her mother's house which was situated nearby for attending her grandfather's Shradha Ceremony. Her daughter was about 14 and 1/2 years old at that relevant time. As it was the time for her daughter to go for tuition, she asked her to go to their house. After coming to her house the victim noticed that the accused by entering into their house was opening a box. Witnessing the same, her daughter shouted. The accused then asked her to keep quiet but when she shouted the accused grabbed her and pulled off a side of her shirt she was wearing and fled from the place of occurrence. She proved her FIR as Ext. 1. In her cross-examination she stated that she did not witness the said occurrence.
- 5. PW 2 is the alleged victim. She stated that on the said day when she returned from her maternal uncle's house to their house at about 3 PM, she found the accused inside their house. The accused was looking into a box after opening it but when she raised alarm by shouting 'chor' the accused caught hold of her and by tearing off her garments fled from the place of occurrence. According to her, the accused asked her to remain silent and before fleeing, he tore off her garment. Later her statement u/s 164 CrPC was recorded which she proved that as Ext. 2. In her cross-examination she stated that the accused is their immediate neighbour and they are not in speaking terms with him. From the evidence of the victim, we find that even if we even consider her testimony to

Addl. Sessions Judge 5.

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be true, we find that the accused had though asked the victim to remain silent, she did not comply for which the accused fled from the place of occurrence after tearing off her garment. Her evidence therefore discloses that there was no sexual assault being committed on her by the accused. No intention of sexual assault on the victim can be imputed to the accused from his conduct of tearing off a part of her garment while fleeing away from the place of occurrence. Further in her cross, we find the PW2 stating that she did not know as to why the accused had torn off her shirt. The evidence of PW2 in that regard has also been found to be corroborated by the informant, PW 1.

- He did not inquire from her the reason for her crying. PW 4, Naren Saikia has no knowledge about the said occurrence. He is the maternal uncle of the victim. According to him, he small quarrel took place between the accused and the people of informant's house. PW 5 Ranjan Saikia stated that the victim had told him that the accused had torn off her clothes. He did not witness the said occurrence. Thus from the evidence of all these prosecution witnesses more particularly from the evidence of PW 2 the victim as discussed above, we do not find any material to hold that the accused had made any sexual assault on the victim on the said day.
- 7. The prosecution has failed to prove its case. As such, I acquit the accused from the offence charged against him and set him at liberty forthwith. As the accused has faced trial from custody, the Jail authorities be directed to release the accused forthwith, if he is not required in any other case. 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 22nd day of January, 2019.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

> Addl. Sessions Judge Biswanath Chanan, Sontput



# **ANNEXURE**

# Witnesses examined by the Prosecution:

PW1- Smti Junmani Borkatoki

PW2- Victim

PW3- Sri Chandra Baruah

PW4- Sri Naren Saikia

PW5- Sri Ranjan Saikia



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

Exhibit-1: FIR

Exhibit-2: Statement of the victim u/s 164 CrPC

### Witnesses examined by the Defence:

None.

# **Documents exhibited by the Defence:**

None.

Addl. Sessions Judge Biswanath Chariali, Sonitpur