# CAUSE TITLE POCSO Case No. 65/16

Informant: 'Y'.

Accused: Md. Suga Hussain,

S/o- Md. Raju Hussain, R/o- Maijan Thakurbari,

PS- Dibrugarh, District- Dibrugarh.

## ADVOCATES:-

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

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: A. Sayeed, learned Advocate.

#### IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 65/16 G.R. Case No. 2005/16

> > State of Assam

-Vs-

Md. Suga Hussain

Charges: Under Sections 376 IPC, read with Section 4 POCSO Act.

Date of evidence on : 20-09-17, 15-11-17, 05-02-18, 15-03-18 and 20-07-18.

Date of argument : 20-03-19. Date of Judgment : 26-04-19.

#### <u>JUDGMENT</u>

- 1) The prosecution case in a narrow compass is that on 21-07-16, at about 11:30 pm, Md. Suga Hussain (hereinafter the accused person) induced the sixteen year old victim 'X' to go with him and took her into Maijan LP School and solicited her for objectionable activities and were caught red handed by the public. The accused was sent away, while the victim was handed over to 'Y'. An ejahar regarding this incident was lodged by 'Y' and a Borbari Outpost GD Entry No. 561 dtd. 22-07-16 was registered and the FIR was forwarded which was registered as Dibrugarh PS Case No. 571/16 under Sections 354-A of the Indian Penal Code (IPC for short), read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).
- 2) The investigating officer (IO in short) embarked upon the investigation. He forwarded the victim for medical examination and also forwarded her to the Magistrate who recorded her statement. He recorded the statements of other witnesses. He went to the place of occurrence and recorded the statements

- of the other witnesses. On finding prima facie materials, he submitted Charge-Sheet against the accused under Section 376 IPC, read with Section 4 POCSO Act.
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 376 IPC, read with Section 8 POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of eight witnesses including the medical officer (MO for short) and the IO and exhibited several documents. On the inculpatory circumstances arising against him, the answers of the accused to the questions under Section 313 (1)(b) of the Code of Criminal Procedure (CrPC for short) depicts a plea of total denial.
- 5) I have heard the arguments forwarded by both the sides.

## **Points for determination:**

- i. Whether on 21-07-16, at about 11:30 pm, the accused committed rape on the victim 'X'?
- ii. Whether at the same time and place, the accused committed penetrative sexual assault on the victim inside Maijan LP School?

#### **Decision thereon and the reasons for the decision:**

- 6) To decide this case in its proper perspective, it is necessary to delve into the evidence.
- 7) The victim 'X' testified as PW-1 that the alleged incident occurred about a year ago. She got acquainted with the accused when she used to commute to her school. One day, the accused called her over phone and she went out and

met him and he took her to the school at night. He forcefully committed rape on her, after removing her dress. When she tried to resist, the accused held her hand and feet and gagged her, preventing her from screaming. When the people saw the accused in the school, the accused fled and left her in the school. The people then called her parents and then her mahi (aunt) called the police. On the following day, the police called her to the police station and recorded her statement. Her mother lodged an ejahar with the police on the following day. The police forwarded her for medical examination. She was also forwarded to the Magistrate who recorded her statement. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(3) are her signatures.

- 8) It is pertinent to mention at this juncture that the testimony of the witness is far fetched and sketchy. It is not possible that she will be able to go out of her house in the middle of the night without informing her parents. Her conduct depicts that she had a love relationship with the accused. It is clear that she willingly went out. She has mentioned in her statement under Section 164 CrPC that she had a love relationship with the accused and she stopped her relationship, because she learnt that the accused was not a good person. When she was caught red handed in the act, she falsely entangled the accused in an apathetic manner.
- 9) In her cross-examination, she testified that her parents knew about her relationship with the accused person and they used to oppose this relationship, because the accused was of Islam faith. She admitted in her cross-examination that she stealthily went out of her house when her parents were sleeping and met the accused person on the fateful night. She has also admitted in her cross-examination that her marriage was solemnized with another boy in the month of October, 2016 and at present, she is blessed

with a baby girl.

- 10) It is clear from the evidence of PW-1 that she stealthily went of the house and met the accused. It is clearly depicted that she relied on the accused and did not hesitate to go out in the middle of the night.
- 11) The victim's mother 'Y' testified as PW-2 that the incident occurred about a year ago. On the midnight of the incident, at 12:00 O' clock, she received information from Sri Kamal Bageri over phone that her daughter was found inside Maijan LP School. At that time, she was sleeping and found her missing when she received the phone call. Then she went to the school along with her husband. The villagers informed her that her daughter was undressed and found naked and the accused had committed rape on her and the villagers covered her body. Her daughter informed her that the accused called her over phone and dragged her into the school and then he committed rape on her. Meanwhile, the police arrived in the school. On the following day, she went to the police station along with her daughter. On the previous night, she took her daughter from the school to her sister's house. When she and her daughter went to the school, the police recorded their statements. She lodged the ejahar Ext. 2 wherein Ext. 2(1) is her signature. Her daughter was forwarded for medical examination.
- 12) In her cross-examination, she admitted that her daughter was not allowed to use the mobile phone, but her daughter used the mobile phone stealthily. She further testified in her cross-examination that she came to know about her daughter's relationship with the accused after the incident.
- 13) It is pertinent to mention at this juncture that PW-2 contradicted her own statement when she testified in her cross-examination that her brother Chandan assaulted the accused person prior to the instant case and then she

learnt about the relationship between the accused and her daughter. This has been admitted by PW-1 in her cross-examination when she testified that the accused lodged a case against her mama (Chandan) when her mama assaulted him for her relationship with the accused person. Her mama caused serious bleeding injuries on the accused person.

- 14) It is amply clear from the cross-examination of PW-2 that she was not willing to disclose that she had knowledge about her daughter's relationship with the accused person and so lied when she testified in her cross-examination that she learnt about her daughter's relationship with the accused after this incident. But it is clear from the cross-examination of PWs-1 and 2 that there was an incident of assault and the accused already lodged a case against PW-2's brother for the assault and so PW-2 was well aware of her daughter's relationship with the accused person. Thus, the defence could impeach the credit of the witnesses. The evidence of the witnesses casts a shadow of doubt over their veracity. When her daughter was found in a compromising condition with the accused person by the villagers, they immediately shifted the burden on the accused person of being complicit. PWs-1 and 2 tried to project that the accused forced PW-1 into having the objectionable relationship on that night in the Maijan school. While analysing the evidence, the one has to read between the lines. It is clear from the evidence of PWs-1 and 2 that they are not reliable. To save the reputation of PW-1, they have foisted this case against the accused person.
- 15) Sri Kamal Bageri testified as PW-3 that the accused resides behind his house.

  The victim is not known to him. The incident occurred about a year ago. At that time, he was the President of the VDP. On the day of the incident, at about 11:00 pm, the police called him over phone and he went to the victim's

aunt's (mahi)'s house. He came to know from the victim's mahi Babli that the police brought one girl from Maijan LP School and she was being interrogated. He heard from the people gathered at Babli Dey's house that both the victim and the accused were found inside Maijan LP School.

- 16) This can be deciphered from the evidence of PW-3 that Sri Kamal Bageri had no knowledge of any sexual assault upon the victim by the accused. He is the same person who informed the victim's mother that the victim was found inside Maijan LP School. Had there been any incident of assault, the VDP members would have definitely testified of such assault. He testified in his cross-examination that he knew the accused person since he was a kid. He denied any knowledge about any sexual assault. On the contrary he (PW-3) testified in his cross-examination that the victim and the accused had a love relationship.
- 17) Similarly, Md. Bhigu Hussain testified as PW-4 that the incident took place about a year ago. His house is at a distance from the accused person's house. On the next day of occurrence, his friend called him over phone and informed him that a minor girl was found inside the Maijan LP School. He went out and he met the police and the police asked him about the direction to the victim's house. This witness also did not implicate that the accused committed sexual assault on the victim.
- 18) Another witness Md. Rakibuddin Ahmed testified as PW-5 that the incident occurred about six months ago. On the night of the incident, at about 11/12 O' clock midnight, one person called him over phone and informed that somebody went inside the Maijan LP School and then he went there and found the victim and the accused person in the verandah of the school and other people were assembled there. As the victim's aunt resides nearby, they

- informed her aunt. The VDP President was also informed and took the victim to her aunt Babli Day's house. This witness denied any knowledge about any sexual assault.
- 19) It is pertinent to mention at this juncture that the victim's aunt did not at all implicate that the accused committed sexual assault on the victim. She was the first person to learn about the incident, because she was informed about the victim's presence in the LP School.
- 20) Smt. Babli Seal testified as PW-6 that the victim is her niece and her younger sister's daughter. The alleged incident took place about 1 ½ months ago. On the next day of the incident, the villagers came and informed her that the victim was found inside Maijan LP School. Then she along with her husband went to the school and found 'X' in the school with many other people who were also assembled. The victim informed her that the accused called her and so she went to the school. Her mother sent 'X' to her house. After one hour, police came to her house. The police recorded her statement.
- 21) In her cross-examination, she testified that she learnt on that day that the victim had a love relationship with the accused.
- 22) Thus truth surfaced, and Babli Seal truthfully testified that her niece had a love relationship with the accused. Her niece informed her that the accused called her. It is amply clear from her testimony that her niece did not accused Suga Hussain of having penetrative sexual assault upon her.
- 23) I would like to focus the attention on the Medico-legal Report. Dr. Nibedita Shyam testified as PW-7 that on 23-07-16, while working as GDMO in the Department of Forensic Medicine, Assam Medical College & Hospital at Dibrugarh, she examined the victim in connection with this case. Yet her opinion is that the victim was above fourteen years and below sixteen years

of age. No evidence of recent sexual assault could be detected on the victim's body. The evidence of recent injury could not be detected on her private part. It is thus clear that no injury could be detected on the victim's private part. Thus, there is no evidence of sexual assault. Both the accused and the victim were caught red handed. Although the victim is found to be below sixteen years of age, the accused is given the benefit of three years on the higher side of sixteen years. So this stretches the age of the victim upto nineteen years. The victim was a consenting party. Her evidence does not inspire confidence. The accused is not held guilty of offence of sexual assault. It is held that the evidence of Babli Seal clearly reveals that the prosecution failed to prove that the accused committed sexual assault on the victim. Even though PWs-1 and 2 tried to fasten the guilt on the accused, yet it is held that the prosecution failed to prove beyond reasonable doubt that the accused committed penetrative sexual assault on the victim.

- 24) The IO is a formal witness and he conducted investigation. The IO SI Dilip Kumar Chutia testified as PW-8 that on 22-07-18, he was on duty at Borbari Outpost as Second Officer. On that day, 'Y' lodged an ejahar and Borbari Outpost GD Entry No. 581/16 was registered and forwarded to Dibrugarh Police Station and this case was registered and he continued with the investigation. Ext. 2 is the FIR and Ext. 2(2) is the signature of SI Dipendra Chetia with his endorsement.
- 25) After carefully analyzing the evidence of the witnesses, it is held that the prosecution failed to prove beyond reasonable doubt that the accused is complicit. The victim's evidence does not inspire confidence.
- 26) In view of my foregoing discussions, it is thereby held that the prosecution failed to prove beyond reasonable doubt that the accused committed rape on

the victim 'X'. It is held that the victim was a consenting party. The victim is

also held to be a major by giving the benefit of three years on the higher side

of the age of the victim given by the MO. The prosecution also failed to prove

beyond reasonable doubt that the accused committed penetrative sexual

assault on the victim. Thereby, the accused Md. Suga Hussain is acquitted

from the charges under Sections 376 IPC, read with Section 4 POCSO Act on

benefit of doubt and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 26<sup>th</sup> day of

April, 2019.

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

> > Contd.

## APPENDIX POCSO Case No. 65/16

## List of witnesses for prosecution:

- 1. PW-1 The victim;
- 2. PW-2 The informant;
- 3. PW-3 Sri Kamal Bageri;
- 4. PW-4 Md. Bhigu Hussain;
- 5. PW-5 Md. Rakibuddin Ahmed;
- 6. PW-6 Smt. Babli Seal;
- 7. PW-7 Dr. Nibedita Shyam;
- 8. PW-8 SI Dilip Kumar Chutia.

## List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil.

List of exhibits for defence: Nil.

Sessions Judge, Dibrugarh

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