IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 29 of 2016, U/S 457/342/323/34 IPC & Section 8 of POCSO Act 2012 (Arising out of Nazira P.S. Case No. 153/2016)

State of Assam

-Vs-

Sri Biki Bhumij
 Sri Riki Bhumij

3. Sri Arun Karmakar @ Gurku Accused persons

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. Bikash Puri, Advocate

Date of framing Charge : 31.10.2016

Dates of Evidence : 27.01.2017, 21.03.2017, 07.06.2017,

14.12.2017

 Date of S/D
 :
 25.01.2018

 Date of Argument
 :
 07.03.2018

 Date of Judgment
 :
 21.03.2018

<u>JUDGMENT</u>

1. Prosecution case, in brief, is that on 01.08.2016, Sri Amar Keot lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, that on 30.07.2016, at about 12 mid-night, while his 17 years old daughter victim 'K' (name withheld) was sleeping in the house, accused Biki Bhumij entered into the house by breaking open the window and after gagging her mouth, forcibly took her to the nearby field, where accused Arun Karmakar @ Gurku and S. Mali were waiting for them. Thereafter, they pulled her clothes with an intention to outrage her modesty. At about 4.30 a.m., when the factory labours Spl. (P) Case No. 29 of 2016

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were returning, they kept the victim hidden where from she flew away. Out of fear, victim did not inform the matter to his family members immediately. It is also alleged that on 31.07.2016, at about 06.10 P.M. accused Riki Bhumij has physically assaulted the victim with a bamboo fencing stick on her person. On 01.08.2016 in the morning hours, on seeing the swelling on the face of the victim, on asking she narrated the incident to him.

- On this FIR, Nazira P.S. Case No. 153/2016 U/S 448/342/325 IPC and Section 8 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused persons namely Biki Bhumij, Riki Bhumij, Arun Karmakar @ Gurku and S. Mali were arrested and remanded to judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named four accused persons U/S 448/342/325 IPC and Section 8 of POCSO Act, 2012.
- 3. Accused persons namely Biki Bhumij, Riki Bhumij, Arun Karmakar @ Gurku and S. Mali were produced before this court for trial as the case is exclusively triable by the court of Special Judge. However, during trial, learned counsel of the accused has taken the plea of juvenility regarding accused Sri S. Mali, as such vide order dated 06.08.2016, learned CJM, Sivasagar was directed to hold an enquiry regarding the actual age of the accused S. Mali and on receipt of the report from learned CJM, Sivasagar and after affirming that on the date of occurrence accused S. Mali was a juvenile, vide order dated 02.09.2016 case against him was referred to learned Principal Magistrate, JJB, Sivasagar and the case against other three accused persons proceeded before this court.
- 4. Upon taking cognizance on the charge sheet, copies were furnished to the accused persons and after hearing both sides, vide order dated 31.10.2016, my learned predecessor in office has framed the charges U/S 457/342/323 IPC read with Section 34 IPC and Section 8 of POCSO Act, 2012 against the accused Sri Biki Bhumij, Sri Riki Bhumij and Sri Arun Karmakar @

Gurku to which they pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined six witnesses including the victim, M.O. & I.O.

- 5. Upon completion of the prosecution evidence, accused were examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when they were called upon to enter into defence.
- 6. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. Bikash Puri, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

7. <u>POINTS FOR DETERMINATION ARE</u> -

- (i) Whether on 30.07.2016, at about 12 mid-night, accused persons, in furtherance of their common intention committed lurking house trespass by night by entering into the house of the complainant?
- (ii) Whether from 12 mid-night of 30.07.2016 till 5.00 A.M. of the next morning, accused persons in furtherance of their common intention wrongfully confined the victim 'K' at Bamunpukhuri football play ground?
- (iii) Whether on 31.07.2016, accused persons in furtherance of their common intention voluntarily caused hurt to victim 'K'?
- (iv) Whether from 12 mid-night of 30.07.2016 till 5 am of the next morning, accused persons committed sexual assault on the victim 'K' with sexual intent?

DECISION AND REASONS THEREOF

8. PW-1 Sri Amar Keot, the informant of this case in his evidence deposed that accused Biki Bhumiz, Riki Bhumiz and Gurku @ Arun are known to him. Victim K is his daughter. On 01.08.2016, while he was returning home from work, he saw that his daughter K was about to go to school by wearing a cloth on her face and on this he has enquired the reason for putting cloth on her face. She reluctantly told him that yesterday at about 06.00 PM, while she was returning from field after sowing paddy, accused Riki Bhumiz has physically assaulted her. She also told him that after wrongfully restraining her, accused

Riki has thrown a piece of brick which did not hit her. Thereafter accused has assaulted her with bamboo fencing stick. Her daughter got injury on her back of chest, face. She also told him that on 30.07.2016, at midnight hours, accused Biki has forcibly took her through window to nearby football field. At that time accused Riki was standing outside of her house, Arun was standing near gate and S Mali (Juvenile) was near the school. She also told him that by taking her to the field, the accused persons pulled her cloths and by seeing the labours coming out of duty, she went back to home. Out of fear she did not inform the matter to them on the same night. On this incident, he has lodged the FIR vide Exbt.1. Police interrogated him. Police also took his daughter for medical examination and brought her to Court for statement. At that time, his daughter was aged below 17 years. In his cross by defence PW-1 admitted that he has not seen the incident on his own and has no personal knowledge of the incident. FIR was lodged on 1.08.2016. He has no knowledge if accused Arun Karmakar has love affairs with victim K. He denied that he dislikes their relationship. He also denied that on knowing about affairs, he has attempted to assault the accused persons. He has six brothers. He has no knowledge if his elder brother has physically assaulted his daughter. He has no knowledge if his daughter left his house and stayed for three days with accused Arun Karmakar. He denied that on knowing about this, he went to the house of accused Riki and Biki, who are brothers. His residence is of bamboo fencing and kitchen is brick wall fencing. Accused Riki, Biki and Arun are close friends and used to move together. He further denied that while giving statement to police he has not stated that "while he was returning home from work, he saw that his daughter K was about to go to school by wearing a cloth on her face and on this he has enquired the reason for putting cloth on her face. She reluctantly told him that yesterday at about 6 PM, while she was returning from field after sowing paddy, accused Riki Bhumiz has physically assaulted her. She also told him that after wrongfully restraining her, accused Riki has thrown a piece of brick which did not hit her. PW 1 also deposed that his brothers are residing near to his residence. In his residence, beside him, his wife and 5 daughters are

living. He has submitted age proof document at Police Station. He denied that he has lodged false FIR without knowing incident.

9. PW-2 the victim K in her evidence deposed that accused Biki Bhumiz, Riki Bhumiz and Gurku @ Arun are known to her. On 30.07.2016, at midnight hours, while she was sleeping in her residence alone in a separate room, accused Biki has forcibly entered into her room by opening one window and forcibly took her by putting a cloth on her face through window to nearby football field. There she saw accused Riki, Biki and Arun @ Gurku were present. She could recognise them in the light of Mandir. While she was attempted to flee away, accused persons pulled her cloths. By this time some T.E. labours coming out of their duty and on this accused persons kept themselves hidden. She came back to her home. Out of fear, she did not inform the matter to her family members on the same night. On next day morning i.e. on 31.07.2016, at about 6 PM, while she was returning from field after sowing paddy, accused Riki Bhumiz has restrained her and rebuked with filthy language and physically assaulted her with bamboo fencing stick on her face, back of chest. Her younger sister Minu Keot was with her and she has witnessed the incident of assault. On returning home, she did not inform the matter to her parents. On the next day morning, while she was going to school by hiding her face with cloth, her father asked her about reasons for hiding of face and then she has informed him about both the incidents. On this her father took her to Police Station and lodged the FIR. Police got her medically examined. She gave her statement in Court vide Exbt. 2. On that day, she has deposed in similar line as deposed today. Police also seized her wearing apparels. In her cross by defence victim stated that she has no love affairs with Arun Karmakar. However she admitted that Exbt. A (i) to A(vii) are the letter written by her to accused Arun Karmakar. Her parents dislike their relationship. She denied that on knowing about affairs, her father has attempted to assault the accused persons. On knowing their relationship, elder brother of her father has physically assaulted her. Accused Riki, Biki and Arun are close friends and used to move together. Riki and Biki are brothers. Prior to these incidents, once she went to the

residence of sister of accused Arun and stayed there for 2 days. On 30.07.2016, she was sleeping with her sister Mamoni. She denied that on 30.07.2016, she has called Arun to meet her. However on that night Biki told her that Arun came to meet her and on this she came out of her house to meet Arun. While she attempted to return back, her sister has closed the door from inside under misconception. Thereafter she went on her own to school field to meet Arun. Suddenly some other person has flashed torch light and on this they get themselves concealed. When Biki wanted to return to his house, Arun requested him to put her to their house. Thereafter Arun and Biki accompanied her to her house at about 5 AM. They spent the night near the school building. Out of fear, she did not report the matter to her father. Victim further deposed that her father dislikes the accused persons. Her father complained to the mother of the accused persons by going to their house. On the next day Riki and Biki came to their house to inquire why her father went to their house. Her father threatened them to finish their love story very soon. Victim also denied that she has falsely implicated the accused persons for assaulting her on 31.07.2016. She denied that accused persons did not assault her any day and she got the injury by falling on slip while returning from field. She also denied that out of fear of assault by her father, she has falsely implicated the accused persons for the incidents. She denied that her father has lodged false FIR.

10. PW 3 Dr. Laba Dev Goswami in his evidence deposed that on 01.08.2016, while he was working at Nazira SHC as Medical Office, on that day, at about 2.40 PM, he examined the victim K in connection with Nazira P.S. Case No. 153/16 and found pain and inflammation present at left laterally of upper lip, index finger of left hand, left shoulder joint and at back due to striking with or against by blunt object. Upon examination he opined that the injury was old and simple in nature. He proved his report as Ext.3. In his cross he admitted that the injury was old and simple in nature such injury was caused by blunt object.

- 11. PW 4 Smt. Mamoni Keot in her evidence deposed that accused Biki Bhumiz, Riki Bhumiz and Gurku @ Arun are known to her. Juvenile Sunu Malik is also known to her. Victim K is her elder sister. On 30.07.2016, while her sister K was sleeping with her, at night hours accused Biki Bhumiz entered into their room by breaking open the wooden window and took away her sister K. Accused Gurku was standing on the outside of the window. Out of fear, she could not make any cry. After the incident, she went out of room and saw the accused Gurku. After this, she informed the matter to her father by calling him from sleep. Her father went in search of her sister. On the next morning her sister returned home with injuries on her face. On inquiry she told that accused Biki, Riki, Gurku and juvenile S Mali took her in the night in the nearby field and pulled her cloths and torn her cloths. On being noticed by others, the accused persons flew away and she returned home on early morning. On knowing these, her father lodged the FIR. Police interrogated her at her residence. Police seized one KURTI used by her sister vide Exbt. 4 the seizure list. In her cross examination by defence PW-4 admitted that at the time of incident, she was sleeping with her sister. She has seen her sister in going out of the window but she did not raise alarm. She denied that while giving statement to police she did not inform that after the incident, she came out of the residence and saw Gurku. She also denied that her sister has love affairs with accused Gurku @ Arun. She denied that her sister stayed for 2 days with accused. She also denied that her sister by calling Arun went with him by opening the door and thereafter she locked the door from inside. It is also denied by PW-4 that her uncle assaulted her sister on the matter of maintaining affairs with accused Arun Karmakar. She denied that she is deposing falsely.
- 12. PW-5 Smt. Sangita Keot in her evidence deposed that accused Biki Bhumiz, Riki Bhumiz and Gurku @ Arun are known to her. Victim K is her eldest daughter. On 30.07.2016, K was reading in class IX and aged about 14 years. On the night of incident, her daughter K and Mamoni were sleeping inside the room. On the next day morning Mamoni told her that on 30.07.2016 midnight hours accused Biki has forcibly took away her sister K by entering

through window to nearby school field. By seeing the factory labours coming out of duty, the accused persons flee away and K went back to home. On asking her, she did not tell her anything except that she was taken by accused Biki and her cloth were pulled by accused persons. On the next day while K was assaulted by accused Biki, on this incident, her husband has lodged the FIR. Police seized one KURTI of K. In her cross by defence PW 5 admitted that she has not seen the incidents on her own and has no personal knowledge of the incidents. She deposed basing on disclosure made by her daughters.

13. PW-6 SI Nurtaz Ali in his evidence deposed that on 01.08.2016, while he was posted as second officer at Nazira PS, on that day, the then O/C has received one written FIR from Sri Amar Keot and registered Nazira PS case No. 153/16 u/s 448/342/325 IPC r/w Section 8 of POCSO Act and entrusted him to investigate the case. On taking charge of investigation, he has examined the informant and victim K at PS campus. Victim was sent for medical examination to Nazira SHC. Thereafter, he went to the place of occurrence i.e. residence of informant at Bamun Pukhuri Tengahora Gaon and drawn a sketch map of the PO. Exbt. 5 is the said sketch map. Exbt. 6 (i) is his signature. He has also examined witness found at the PO. On the next day, victim was sent to Court for recording her statement u/s 164 Cr.P.C. On the next day, accused Biki Bhumiz, Riki Bhumiz, Gorku @ arun Karmakar and S Mali appeared at the PS. He arrested the accused persons and forwarded to Court. During investigation, he seized one chocolate colour Kurti (torn) from the victim vide Exbt. 4 the seizure list. He has collected the medical report and statement given by victim in Court. During investigation, he has seen the birth certificate of victim which shows the date of birth as 18.09.1999. On completion of investigation, he has submitted charge sheet against the accused u/s 448/342/323 IPC r/w section 8 of POCSO Act. Exbt. 6 is the charge sheet. Exbt. 6 (i) is his signature. In his cross examination PW 6 deposed that he has not seized any bamboo stick. Witness Amar Keot in his evidence did not state him that "while he was returning home from work, he saw that his daughter K was about to go to school by wearing a cloth on her face and on this he has enquired the reason

for putting cloth on her face. She reluctantly told him that yesterday at about 6 PM, while she was returning from field after sowing paddy, that she also told him that after wrongfully restraining her, accused Riki has thrown a piece of brick which did not hit her. However this witness has stated that victim told him that accused Riki Bhumiz has physically assaulted her." Witness Mamoni Keot in her statement did not state that after the incident, she came out of the residence and saw Gurku.

- 14. Point No. I: So far the charge of house trespass is concerned, though the victim (PW-2) and her sister (PW-4) were the alleged eye witnesses of the occurrence has deposed regarding entry of accused Biki Bhumij through the window and about forcibly taking away the victim, but in her cross examination the PW-2 has taken u turn and stated that having love affairs with Arun Karmakar, on 30.07.2016, on being informed by Biki that Arun came to meet her, she came out of her house and while she attempted to return back, her sister has closed the door from inside under some misconception. Thereafter she went on her own to school field to meet Arun. But suddenly some other person has flashed torch light on them and on this they concealed. Thereafter at about 5.00 A.M. the accused persons put her back in her house. PW-4, sister of the victim however denied the fact of going victim on her own. From the above evidence it is clear that even victim did not raise any alarm which also creates suspicion and supports the cross examination part of the victim. During 313 Cr.P.C. examination it appears that after filing of this case the victim got married with accused Arun Karmakar and has been living with him as wife and husband. As such, from the evidence of the victim, particularly as admitted in cross examination it clearly shows that the allegation of house trespass by accused Biki Bhumij is totally false and exaggerated and found not reliable.
- 15. <u>Point No. II:</u> So far the allegation of wrongful confinement of the victim is concerned, in her cross the victim (PW-2) has admitted that while she was about to return, her sister (PW-4) closed the door from inside for which

she had to remain with the accused persons for the night which shows that on her own she came out of her house and remained there under a peculiar circumstances. The allegation that accused persons kept her wrongfully confined from 12 midnight of 30.07.2016 till 5.00 A.M. of the next morning is found false and not proved.

16. So far the charge of voluntarily causing hurt on the Point No. III: victim is concerned, from the evidence on record, it appears that the alleged incident of physical assault took place on 31.07.2016 as mentioned in the FIR due to assault by accused Riki Bhumij with a bamboo stick. However the informant was silent on this aspect. PW-2 the victim, in her evidence stated that while she was returning from field, at about 06.00 P.M. accused Riki Bhumij has restrained her and rebuked with filthy language and assaulted her with a bamboo fencing stick on her face. PW-2 denied the defence suggestion that accused did not assault her and she got the injury by falling. However in her cross examination in another place she admitted that on knowing her love affairs with accused Arun, her uncle (elder brother of her father) has physically assaulted her. From the evidence of PW-3, the M.O. who has examined the victim on 01.08.2016 deposed that victim came to him with pain and inflammation at left laterally of upper lip, index finger of left hand, left shoulder joint and at back. But in his opinion the M.O. has opined that the injuries are old and simple in nature. No injury was found on the face or on the back of the chest as alleged by the victim. PW-4, the younger sister of the victim has also silent on the alleged history of the victim on 31.07.2016. PW-5, mother of the victim has stated that on the next day, the victim was assaulted by accused Biki. In her cross examination she admitted that she deposed as above on being told by victim. Interestingly, the father of the victim has stated that on finding swelling on the face of his daughter, her daughter i.e. victim 'K' reported to him that on 31.07.2016, at about 06.00 P.M. while she was returning from field after sowing paddy, accused Riki Bhumij has physically assaulted her by throwing a piece of brick and thereafter with a bamboo fencing stick. The victim is silent regarding throwing of brick piece by the accused Riki. From the above

discussions, it appears that the evidence of the victim so far assault by accused Biki did not get support either from Medical Officer (PW-3) or from her mother (PW-5). The evidence of her father (PW-1) was admittedly exaggerated by him as he did not state the relevant portion of assault by Biki before police. So under this circumstances, I am of the opinion that evidence of PW-2 the victim alone cannot be relied upon to hold the accused guilty for the offence U/S 323 IPC. It may be noted here that there was no evidence that in the said assault of 31.07.2016, the other accused persons shared in common intention with accused Riki Bhumij.

- 17. So far the charge U/S 8 of POCSO Act is concerned, Point No. IV: except the victim, all others are hearsay witnesses. The victim in her examination-in-chief though stated that she was forcibly taken to the football play ground and while she attempted to flee away, accused persons pulled her clothes, but in her cross examination as stated earlier, she admitted of having affairs with the accused Arun Karmakar @ Gurku. She also admitted that she on her own went to meet Arun and thereafter due to closure of the door by her sister she could not return back and had to wait till 05.00 A.M. of the next morning and remained to the school field and in the morning hours accused Arun and Biki accompanied her to put at her house. She spent the night near the school building. She also admitted that Exbt. A(i) to Exbt. A(vii) are the letters written by her to Arun Karmakar. On going through those, it appears that the scribe is in deep love and affection with Arun Karmakar. From the cross examination, part of the victim it appears that the allegation of pulling her cloths and misbehaving is exaggerated and cannot be relied upon.
- 18. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charges U/S 457/342/323 IPC read with Section 34 IPC and Section 8 of POCSO Act, 2012 against the accused Sri Biki Bhumij, Sri Riki Bhumij and Sri Arun Karmakar @ Gurku. As such, accused Sri Biki Bhumij, Sri Riki Bhumij and Sri Arun Karmakar @ Gurku are acquitted from

the charges U/S 457/342/323 IPC read with Section 34 IPC and Section 8 of POCSO Act, 2012 and set at liberty forthwith.

- 19. Bail bond executed by the accused and theirs surety are extended for another six months from today U/S 437-A Cr.P.C
- 20. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 21. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 22. Judgment is pronounced in open court. The case is disposed of on contest.
- 23. Given under my hand & Seal of this Court on this the, 21st day of March 2018 Sivasagar.

Special Judge, Sivasagar:

APPENDIX:

- 1. Prosecution witnesses:
 - P.W.1 Sri Amar Keot (Informant)
 - P.W.2 Victim
 - P.W.3 Dr. Laba Dev Goswami (M.O.)
 - P.W.4 Smt. Mamoni Keot
 - P.W.5 Smt. Sangita Keot
 - P.W.6 SI Nurtaz Ali (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Statement of the victim U/S 164 Cr.P.C.
 - Exbt.3 Medical examination report
 - Exbt.4 Seizure list
 - Exbt.5 Sketch map
 - Exbt.6 Charge-Sheet
 - Exbt.A (I) to Exbt.A (vii) --- Letters written by victim.

Special Judge, Sivasagar