IN THE COURT OF THE SPECIAL JUDGE ::::::: NALBARI

Present: Smti S. Bhuyan Special Judge Nalbari.

> SpI(P) CASE NO: 05/17 u/s- 448/354/323/376/511 IPC and Section 8 of POCSO Act

State of AssamComplainant

-Vs-

Md. Rejaul Alam.....Accused person

Appearance :-

For the prosecution : Mr. K. Sarma, Special PP

For the defence : Mr. B. Ali, Advocate.

Date of institution of the case : 12-12-16

Date of evidence : 02-05-18, 29-06-18, 27-07-18,

Statement of accused recorded: 02-04-19

Date of Argument: 04-06-2019

Date of Argument : 04-06-2019 Judgment Delivered : 18-06-2019

J U D G M E N T

1. The case of the prosecution as revealed from the ejahar lodged by one Mrs. Chafila Khatun, wife of Late Rustom Ali Ahmed on 12/12/16, is that on 10/12/16 at about 5-30 pm accused persons, namely, Rejaul Alam, Musstt. Nurjahan Begum and Musstt. Kamala Khatun of same village trespassed into the house of Chafila and accused Rejaul Alam dragged out Sonia Parbeen outside and attempted to commit rape upon her and when Chafila restrained accused Rejaul Alom, he also assaulted the complainant by means of a rod as a result of which she sustained grievous injuries on her ear. Hence, the case.

- 2. O/C Mukalmua PS on receipt of the ejahar registered Mukalmua PS case vide Mukalmua PS case No. 428/16 u/s 448/354/376/511/325/34 IPC and lynched investigation. During investigation, IO of the case visit place of occurrence, drawn sketch map of place of occurrence, recorded statement of the informant and other witnesses, produced informant and her two daughter before Ld Magistrate to record her statement u/s 164 Cr.P.C, issued requisition to collect the medical report of the injured, produced victim girl (daughter of the informant) before doctor for medical examination, arrested accused and after completion of investigation submitted charge sheet against the accused Rejaul u/s 447/354/323/376/511 and section 8 of the POCSO Act.
- 3. On receipt of the charge sheet my then learned predecessor took cognizance and issued process to the accused and after furnishing copies to the accused framed charge u/s 448/354/323/376/511 R/W section 8 of the POCSO Act against the accused Rejaul and when charges are read over and explained to the accused he pleaded not guilty and stood for trial.
- 4. In order to prove the charge against the accused person, prosecution altogether adduces evidence of 8 no's of witnesses including informant/injured, victims, I/O and M/O of the case and exhibited 8 no's of documents. PW-1, Dr Rupkanta Barman, PW-2, Dr Kumud Bania, PW-3, Chabila Khatun (Sabila Khatun), informant, PW-4, Runa Laila, PW-5 Sorhab Ali, PW-6, Dilbar Ali, PW-7 Sonia Parbin and PW-8, Pulakesh Rabha. Ext-1, Medical report of Chabila Khatun, Ext-2, injury report of Runa Laila and Miss Sonia Parbin, Ext-3 statement of runa Laila recorded u/s 164 Cr.P.C, Ext-4 ejahar, ext-5 Stement of Chabial Khatun u/s 164 Cr.P.C, Ext-6, statement of Sonia Parbin recorded u/s 164, Ext-7 Sketch map of place of occurrence, Ext-8 charge sheet. After closures of the evidence of the prosecution, statement of the accused Rejaul recorded u/s 313

Cr.P.C and accused plea is total denial however he declined to adduce evidence in support of his plea of denial.

POINTS FOR DETERMINATIONS ARE:-

- i. Whether accused Rejaul Alam committed house trespass by entering into the house of informant on 10/12/16 at 5.30 PM with intent to commit rape sexual assault on Sonia Parbin?
- ii. Whether accused on the same date, time and place out dressed the modesty of Sonia Parbin?
- iii. Whether on the same date, time and place voluntarily caused hurt on Sonia Parbin and informant?
- iv. Whether on the same date, time and place make attempt to commit rape upon Sania Parbin?
- v. Whether accused on the same date, time and place committed sexual assault on Sonia Parbin who is under the age of 18 years?
- 5. I have heard argument of learned counsel for both sides. Learned Special Public Prosecutor submitted that informant substantiated her statement made in the ejahar and victim girl evidence pointed that accused persons sexually assaulted them and prosecution beyond all reasonable doubt fairly able to establish the case against the accused.
- 6. Countering the same learned defence counsel made submission that prosecution failed to establish the charge against the accused beyond all reasonable doubt and there is contradiction in the statement of PW-1 & victims and no injury was found on the right ear of the informant as per medical report and if accused assaulted her with an iron rod she would have suffered serious injury. He further submitted that the reason for not lodging the ejahar on the same date of incident when Mukalmua P.S is just

near to the Mukalmua PHC and she visit the doctor on the date of incident and therefore delay in filing the ejahar caste doubt in the prosecution case. Moreso, all the independent witnesses of the prosecution goes against the prosecution and PW-6 who is living with in the same compound with informant when reached house immediately after the incident hearing the same did not see any incident and PW-1 also not disclose any fact to her.

DISCUSSION, DECISION AND REASON THEREOF:

- 7. In a proceeding under Protection of Children from Sexual Offence Act presumption is drawn u/s-29 of the Act is that where there is an allegation of commission of offence u/s-3, 5, 7 & 9 of the Act, the special court shall presume that such person has committed or abated or attempted to commit the case as case may be unless the contrary is proved. This being the position for trial of offence under POCSO Act, now let me scrutinized the evidence on record whether evidence on record established the fact alleged against the accused establish the case against the accused or not.
- 8. PW-1 & PW-2 are the medical Officer. PW-1 examined Chafila Khatun (Sabila Khatun), informant on 10/12/16 at about 5 pm. On that day he was working as senior medical and health officer at Mukalmua PHC. On examination he found one abrasion posterior part of left ear. Fresh bleeding present on left ear. Size 1 cm X 0.5 cm X 0.25 cm. Injury is simple caused by blunt weapon. He received police requisition for medical examination on 20/12/2016.
- 9. In cross, he stated patient was not escorted by any police. This type of injury can be sustained due to fall on hard substances. On scrutiny it is seen from Ext-1, medical report of Sabila Khatun, PW-1 examined Sabila on 10/12/16 at 5 pm and requisition for medical examination from police issued on 20/12/16 that means

after examination police issued medical requisition to collect medical report.

- 10. PW-2 is another Medical Officer. He stated on 20/12/16 he examined Miss Runa Laila and Miss Sonia Parbeen and on examination found no any injury. Only injured reported body pain and he examined them in connection with Doulasal O.P GD Entry No.427/16 dated 20/12/16.
- 11. I have scrutinized the record, Ext-4 is the ejahar. PW-3, Chafila Khatun, informant lodged ejahar before O/C, Mukalmua P.S and Mukalmua P.S. registered a case vide Mukalmua PS Case No.428/16 u/s-448/354/376/511/325/34 IPC. Ejahar was not placed before In-charge Doulashal O.P., under such circumstance GD Entry of Doulashal O.P 427/16 dated 20/12/16 is in connection with present case is not coming out clearly. Ext-7 is the sketch map. PW-8 is the I/O of the case and in sketch map he refers Mukalmua PS Case No.428/16. Statement of PW-8 also revealed that on receipt of the ejahar from Chafila Khatun by O/C Mukalmua PS, Mukalmua PS case No-428/16 was registered. There is nothing coming out from the testimony of PW-8 to connect Doulasal O.P GD Entry No.427/16 with present case. PW-8 not stated he took victim to hospital in reference to Doulasal GD entry in connection with present case. There is no medical report available on record on the examination of Sonia Parbeen and Runa Laila on 10/12/16 either from Mukalmua PHC or at Doulasal MPHC. Moreso, there is no injury found on the body of Sonia Parbeen and Runa Laila as per evidence of PW-2, M.O. of the case.
- 12. As revealed from Ext-4 ejahar, incident was took place at 5-30 pm. PW-3 is the informant. Her statement before the court is that incident was took place at 5-30 pm. Ext-1 medical report of PW-3 Chafila (Safila) and statement of PW-3 pointed he examined Chafila (Safila) at 5 pm. If statement of PW-1 made before the court and in her ejahar and her statement recorded u/s-164 Cr.P.C

is perused and taken into consideration, it goes to show that incident was took place at 5-30 pm, then Doctor examined her at 5 pm that too in connection with the injury sustained in the incident alleged in Ext-4 does not derived confidence, because her statement pointed Mukalmua PHC is not adjacent to her house. Her statement further pointed she was unconscious for about after the incident. minutes Thereafter consciousness and then heard about the incident from her daughter and then she was taken to hospital. Thus, if incident was took place at 5 pm, according to her statement she was unconscious till 5.10 to 5.15 pm then she heard about the incident from her daughter, then time is about 5-20/25 PM and then she was taken to hospital. Even if it is presumed that Mukalmua PHC is near to her house then also it takes 5 minutes to take the patient to the hospital and at no point it could be at 5 pm for the examination of PW-1 for the present incident.

- 13. Next point is that PW-3 Chafila (Sabila), PW-4 Runa Laila, PW-7 Sonia Parbeen deposed accused assaulted their mother by rod on her right ear. PW-3 deposed she was assaulted by accused with a rod on her right ear. PW-4 & PW-7 deposed accused assaulted their mother with a rod on her right ear. Rod is heavy blunt weapon. If accused assaulted her with a rod on her right ear then injury must have been serious and it is on her right ear and not abrasion on left ear and doctors found injury on her left ear not right ear. Thus Ext-1 cannot be considered as medical examination report of the Chafila Khatun in respect of incident narrated by her and Ext-1 injury report failed to substantiate prosecution plea that accused has caused injury on the left ear of Chafila by assaulting her with an iron rod.
- 14. PW-3 deposed when she came forward to restrained accused from attacking her daughter, Runa Laila, accused gave one blow on her right ear with an iron rod and she became unconscious and after 10/15 minutes she regained her sense and

then her younger daughter, Sonia Parbin told her that accused also held her hair, pressed her breast and her daughter was taken to Doulasal PHC and she was taken to Mukalmua PHC and on the next day she lodged ejahar. But Ext-2 medical report does not point Runa Laila and Sonia Parbin were taken to Doulasal PHC on the date of incident. She did not hand over any medical documents to the I/O during investigation in respect of providing treatment to her daughter Runa Laila, Sonia Parbin on the date of incident i.e on 10/12/16. PW-3 stated in cross Runa Laila is her second child and her first child is a son, aged about 22 years

- 15. PW-3 informant Chafila Khatun deposed incident was took place on 10/12/16 at about 5/5-30 pm and at that time she was present in her room. She stated when she wanted to go to her kitchen she heard shouting of her daughter, Runa Laila and went towards her kitchen. Her this statement pointed when incident was took place she was present in her room and she came from her room when she heard shouting of her daughter, Runa Laila. In Ext-4 ejahar PW-3 mentioned assault on Runa Laila not disclosed and it is made after lodging the ejahar as such, this piece of evidence is not believable beyond all reasonable doubt.
- 16. PW-4 Runa Laila deposed on the date of incident after completion of the examination at 3 pm reached home. Thereafter, changed her clothes, became fresh and when proceeded towards Kitchen which is about 20 ft distance from their main house, accused entered running from his house and entered into their courtyard, hold her hair tried to drag her, pressed her breast, called her prostitute and when she cried her sister and mother came.
- 17. PW-7 is sister of PW-4 and daughter of PW-1. Her statement is that she and her sister reached home from school and when she was going towards kitchen with her sister Runa Laila to take rice and at that time her mother was cooking food in the kitchen and

accused wanted to assault her and her sister. Her mother restrained accused and then accused assaulted her mother with rod. Thereafter, dragged her towards gate holding her hair and pressed her breast and she became senseless.

- 18. When statement of PW-3, PW-4 and PW-7 perused together it goes to show that they have gave their own version of the incident. PW-3 stated she was in her room and wanted to go to the kitchen. PW-7 stated at the time when incident was took place her mother was already in the kitchen. PW-4 did not state where from her mother and sister came. PW-7 claimed that she and her sister together proceeded towards kitchen to take rice. But PW-4 claimed she was going alone in the kitchen. PW-4 & PW-3 stated accused first attacked PW-3 but PW-7 stated accused first assaulted her.
- 19. PW-4 stated accused first attacked her then attacked her mother and lastly attacked her sister i.e one after another. She stated when accused attacked her mother, she became unconscious. Accused caught her sister hair and squeezed her breast and called her prostitute. She stated hearing her hue and cry village people rushed to their house and then accused left their home and her mother lodged case. Her cross stated she is not married but she admitted that she eloped with one Abdul Mazid. Her date of birth is 19/01/2001. Accused is her cousin brother, son of her Bardeuta i.e elder brother of her father. When statement of PW-3, PW-4 & PW-7 read together it is seen that PW-7 made different chronological order of the incident. Her statement is that when she and her sister, Runa Laila proceeded to take rice their mother was cooking rice in the kitchen. Accused assaulted her and her sister. Her mother came to restrained accused. Accused assaulted her mother with an iron rod. Thereafter, held her hair, dragged her towards the gate, and squeezed her breast. She became unconscious and stated that accused also wanted to assault her sister but could not succeeded. Her statement pointed the story stated by PW-3 & PW-4 with regard to holding of Runa

Laila and squeezing her breast by accused contradicted by their own daughter and sister PW-7 Sonia Parbin. She specifically stated that accused failed to assault her sister. Thus statement of PW-3 & PW-4 with regard to sexual assault on PW-4 is not established. PW-3's version pointed she did not witness incident of assault on PW-7. PW-7 did not state she disclose incident to her mother when she regained consciousness. According to PW-7 mother witnessed the incident of assault on her but her mother statement does not revealed the same. Therefore, the story of sexual assault on PW-7 does not inspire confidence to the prosecution case. The cross-examination of PW-4 & PW-7 pointed that accused is their cousin brother, there is an iron gate and there was a fencing and neighboring people rushed to their house immediately on hearing cry for their help.

20. PW-6, Md. Dilbar Ali is residing in the same campus where PW-3, PW-4 & PW-7 live. His statement is that on the date of occurrence in the evening which is at a distance of two 'tar' from his house while he was fishing, Diljan informed him that quarrel took place at his house. He rushed to the house but he did not notice anything. His evidence clearly pointed he and Chafila reside in the same house. PW-3, PW-4 & PW-7 evidence pointed neighboring people rushed to their house instantly hearing their cry. But when PW-6 came to their house he did not notice anything. PW-3, PW-4 & PW-7 evidence do not reveal that they disclosed incident to any villager. Statement of I/O also not pointed taking of any evidence of neighboring people. PW-5 who is another neighbour of the PW-3, PW-4 & PW-7 also not witness any incident and only heard about taking place of guarrel. Therefore, the story stated by PW-3, PW-4 and PW-7 does not inspire confidence in view of the testimony of PW-6 who being one of the resident of same compound when reached home soon after the incident did not witness any unnatural events circumstances.

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21. In view of the aforesaid discussion, I come to my definite

finding that prosecution evidence is not sufficient enough to hold

accused Rejaul guilty of committing of offence u/s

448/354/323/376/511 IPC and section 8 of the POCSO Act and I

hold prosecution failed to bring home the charge u/s-

448/354/323/376/511 IPC and section-8 of the POCSO Act beyond

all reasonable doubt and accused entitled to benefit of doubt.

22. In the result accused Rejaul Alam acquitted form the charge

u/s-448/354/323/376/511 IPC and section-8 of the POCSO Act and

set at liberty.

23. However, his bail bonds remain stands for 6 months u/s-

437-A CrPC.

Judgment is given under my hand and seal of this court on

this the 18th day of June, 2019.

Special Judge Nalbari

Dictated & corrected by me

Special Judge, Nalbari<u>.</u>

Typed by:

Biswajit Bhattacharjya

APPENDIX

A. **Prosecution witnesses**

PW-1: Dr Rupkanta Barman,

PW-2: Dr Kumud Bania,

PW-3: Chafila Khatun (Sabila Khatun)

PW-4: Runa Laila,

PW-5: Sorhab Ali,

PW-6: Dilbar Ali,

PW-7: Sonia Parbin

PW-8: Pulakesh Rabha.

B. Defence witness

NIL

C. Prosecution Exhibits

Ext-1: Medical report of Chafila Khatun

Ext-2: injury report of Runa Laila and Miss Sonia

Parbin,

Ext-3: statement of Runa Laila recorded u/s 164

Cr.P.C,

Ext-4: ejahar

Ext-5: Statement of Chafila Khatun u/s 164 Cr.P.C.

Ext-6: Statement of Sonia Parbin recorded u/s 164

Cr.P.C.

Ext-7: Sketch map of place of occurrence,

Ext-8: Charge sheet.

D. <u>Defence Exhibit</u>

Nil.

Special Judge Nalbari