

Chirang, Kajalgaon

IN THE COURT OF THE SPECIAL JUDGE

CHIRANG, KAJALGAON.

Special (P) Case No. 43(RKT)/2018 U/S 6 of POCSO Act.

State of Assam

:::::::::

Vs.

Sri Kartik Besra

.....Accused

PRESENT:

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri N.I. Siddique,

Smt. P. Chutia, Ld. Advocates

Date of evidence

: 04.02.19, 27.02.19,

09.07.19, 08.08.19

Date of Argument

: 31.08.2019

Date of Judgment

: 31.08.2019

JUDGMENT

1. The prosecution case, in brief, is that on 01.11.2017, the informant Sri Alma Hasda lodged an FIR before the I/C, Shantipur Police Out Post alleging that on 06.10.2017, Friday, at about 12 midnight, while Miss 'X' (name is withheld), 13 years, the minor daughter of the informant was coming towards home from the fair of Lakshmi Puja held at Nakedara, on the way, accused Ram Kisku and Kartik Besra, who were hiding near the road, suddenly

came out and tying her mouth with cloth, took her to the nearby jungle and committed rape upon her thereon. After the occurrence, while the victim was weeping on the road, Sri Ghatial Tudu of North Nakedara along with his three friends found the victim and she reported them about the entire incident and thereafter, they brought her to her home and handed over to her parents.

- 2. After the receipt of the FIR, the I/C, Shantipur Police Out Post made Shantipur O.P. GDE No. 09 dtd. 01.11.17, the I/C himself took up the investigation of the case and forwarded the FIR to the O/C, Runikhata Police Station for registering a case. The O/C, Runikhata P.S. accordingly registered a case being numbered as Runikhata P.S. Case No. 36/2017 U/S 341/376/(2)(i)/376(D) IPC R/W Section 6 of POCSO Act. Accordingly, the I.O. arrested the accused Ram Kisku, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C and after completion of investigation, submitted charge-sheet against the accused persons, namely, Ram Kisku and Kartik Besra showing him as absconder U/S 341/376/(2)(i)/ 376(D) of IPC R/W Section 6 of POCSO Act. As accused Ram Kisku was found to be juvenile, hence, he was sent to Juvenile Justice Board. Charge sheet against Kartik Besra was submitted before this court as section 6 of POCSO Act is triable by this court.
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- 3. After receiving charge-sheet, as accused was absconding, NBWA and P/A were issued against him and he was arrested on the strength of P/A issued from this Court and he was produced before this Court on 26.11.2018. Thereafter, copies of relevant documents were furnished to the accused person. Accused person was produced before the court from jail. On perusal of entire materials on record and hearing both sides on point of consideration of charge and after having found a prima facie case, formal charge was framed U/S 6 of POCSO Act against accused Kartik Besra. Charge was read over and explained to the accused person to which he denied to plead guilty. Later on, accused was released on bail after recording evidence of victim.

4. In support of the case prosecution side examined as many as 6 (six) witnesses including the I.O.

Following witnesses were examined:-

- (1) Victim Miss X (name is withheld) as PW 1
- (2) Sri Alma Hasda (Informant) as PW 2
- (3) Sri Mongal Soren as PW 3
- (4) Smt. Shanti Soren Hasda as PW 4
- (5) Sri Sakti Basumatary as PW 5
- (6) SI Hasthaisula Brahma (I.O.) as PW 6
- 5. Statement of the victim recorded U/S 164 CrPC was exhibited as Ext.1. FIR was exhibited as Ext.2. Sketch map was exhibited as Ext.3. and charge-sheet was exhibited as Ext.4.
- 6. Defence plea is of total denial. Defence adduced no evidence.
- 7. Heard argument from both sides. I have perused the entire evidence on record. I have also considered the statement of the accused recorded u/s 313 Cr.P.C.

POINT FOR CONSIDERATION:-

For the offence U/S 6 of POCSO Act

1. Whether on 06.10.2017, at about 12.00 a.m. night, at village North Nakedara bazar, on the way under Runikhata P.S., the accused committed aggravated penetrative sexual assault (gang penetrative sexual assault with other juvenile) upon Miss 'X' (name is withheld), aged about 13 years daughter of the informant?

DISCUSSION, DECISION AND REASONS THEREFOR:-

9. Now, I want to scrutinize the prosecution evidence on record to prove the case U/S 6 of POCSO Act.

- 10. It was alleged in the FIR that when victim was returning from fair of Lakshmi Puja, on the way, accused Ram Kisku and Kartik Besra restrained her and took her to nearby jungle from the road tying her mouth with cloth and committed sexual intercourse upon her thereon.
- 11. PW 1 is the victim. As her age is about 14 years for which her understanding capacity was tested and accordingly, after questioning her, it was found that she had understood the value of oath for which oath was taken by her. She deposed that her date of birth was 12.08.2004 as heard from her father. Occurrence took place on 06.10.2017 at midnight when she was returning from the fair held at Nakedara. She went to the fair at about 10 PM along with her nephew Haridas Hasda. At 1 O'clock midnight, she returned to her home and on the way, present accused Kartik Besra and one Ram Kisku pulled her to nearby jungle. After that accused Kartik Besra put off his pant and put off her undergarments and committed sexual intercourse. According to her, other accused Ram Kisku caught her mouth. She made hue and cry but her nephew did not hear the sound. According to PW 1, she did not know the accused Kartik Besra. After the incident, from Ram Kisku, she knew the name of the accused as Kartik Besra. When accused committed sexual intercourse within the jungle, so many persons were returning from the fair. After commission of the incident, both Kartik Besra and Ram Kisku fled away and she was returning alone. On the way, she met one Sapal Tudu and narrated the incident to him. Initially, she did not know the name of the accused. After that her father lodged the FIR. During the cross-examination, this witness stated that actually at 10 PM, she went to the fair along with her parents. Her nephew Haridas was not accompanying her. She stayed at fair along with her friends but at relevant point of time, she was returning to her home alone. 10/12 persons gathered at P.O. when she made hue and cry after the incident and those people took her to her home and reported the matter to the informant, her father. Her father beat her. According to this witness, immediately after the incident when she was brought to her home, she did not state anything to her father. She failed in Class VII. In her crossexamination, PW 1, the victim clearly stated that actually present accused did not commit any sexual act with her. What she has deposed before this Court was tutored by her father. As she was found with the accused Ram Kisku and

Kartik Besra, the villagers advised her father to lodge FIR. Actually no sexual intercourse took place in between her and accused. According to victim at present, she is a married woman and she is living with her newly wedded husband.

12. PW 2 is the informant as well as father of the victim. He deposed that occurrence took place on 06.10.2017. There was fair near his home and at about 9 PM, he along with his wife and victim went to enjoy the fair. At about 11 PM, he along with his wife returned to their home but victim was enjoying video in the house of her friend. When they were sleeping, at about 12.30 AM, two Adivashi boys took the victim to their home and told him that she was found in a jungle along with two boys. They pulled his daughter to the jungle. He knew the name of one boy as Ram Kisku but he does not know the names of the boys who took his daughter to their home at midnight. When he beat his daughter, then she told him that two boys pulled her and took to the jungle and committed sexual intercourse with her but she did not tell the name of the boy who committed sexual intercourse with her. He asked about the incident to Ram Kisku then he told him that he did not commit any sexual act with the victim but one Katti committed sexual intercourse. He does not know Katti. He immediately informed the matter to village headman but no meeting was held due to illness of the village headman. They tried to compromise the matter was not settled for which he did not lodge the FIR immediately after the incident. He informed police verbally after the incident but no case was registered at that time. Present accused was apprehended by the ceasefire members of the COBRA organization and according to their advice, he lodged the FIR. During cross-examination, he deposed that victim eloped with a boy after the incident and now she is living together with him as husband and wife. After the incident, she fled away with another boy and then he returned back her. After recovery of his daughter by two Adivashi boys, when he knew about the incident, he beat the victim at night.

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13. PW 3 is Shri Mongal Soren, who deposed that he was informed on the next day of the occurrence by the informant. He told him that accused Kartik Besra and Ram Kisku committed sexual intercourse with his daughter. He has no personal knowledge about the incident. No meeting was held in

their village regarding the incident though informant filed a petition to convene a meeting. The informant reported him that one Ghatial Tudu and another boy brought the victim to her home at midnight as reported by the informant. During cross-examination, he admitted that he did not state before the I.O. that informant told him that one Ghatial Tudu and another boy brought the victim to their home.

14. PW 4 is the mother of the victim. She deposed that occurrence took place about less than one year and on the date of occurrence; age of her daughter was about 11 years. Her daughter went to the fair at about 9 PM along with her and her husband and as her daughter was watching video for which they left her in the fair and returned to their home. At about 10 PM, two boys came to their home and told them that her daughter was weeping and they found her on the road and took her to their home. The victim reported her that one boy committed sexual intercourse with her. They tried to compromise the matter but no such compromise took place for which her husband lodged ejahar. According to PW 4, victim reported her that present accused had committed sexual intercourse with her daughter. During crossexamination, she deposed that she does not know the date of birth of her daughter. Her daughter eloped with another boy prior to the incident and after the incident she again fled away with a boy and now she is living with him as husband and wife.

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15. PW 5 is Shri Sakti Basumatary, who deposed that he does not know the informant and victim. He also does not know the accused. Nakedara is situated about 3 km away from his village a fair held thereon every year at the time of Lakshmi Puja. He visited the fair at Nakedara for two times. He knows Dwithun Narzary whose house is situated near his house. At this stage, she was declared as hostile. During his cross-examination by prosecution, it was suggested that he stated before the I.O. that on 06.07.2017 at 12 O'clock mid night when he along with his friend Dwithun Narzary were returning from Nakedara Lakhi Puja festival on motorcycle, on the way, he heard that someone was weeping and then he stopped his motorcycle and proceeded towards jungle and then two boys fled away by running and one girl came out from jungle in weeping condition and they asked about the reason of weeping

then she told them that two boys, namely, Kartik Besra and Ram Kisku brought her to the jungle by gagging and committed rape. Then, they searched the boys but they fled away and they handed over the girl to the villagers and they returned to their home. But said suggestion was denied by this witness. During cross-examination by defence, he deposed that he has seen the accused for the first time before this Court and he does not know the address of the accused.

16. PW 6 is the Investigating Officer, who deposed that on 01.11.17, he was working as I/C of Shantipur P.P. On that day, at about 5.30 PM, one Sri Alma Hasda, the PW 2 lodged an FIR before him stating inter alia that on 06.10.17, the present accused committed rape upon his daughter. After receiving the FIR, he made Shantipur P.P. GD Entry No. 09 dated 01.11.2017 and FIR was forwarded to O/C, Runikhata P.S. and he started investigation. He visited the P.O. and the house of the informant, interrogated the victim, informant and other witnesses. In the meantime, O/C, Runikhata P.S. registered the FIR being numbered as Runikhata P.S. Case No. 36/17 U/S 341/376(2)(i)/376(D) IPC R/W Section 6 of POCSO Act and he was entrusted for investigation. Thereafter, he arrested the accused Ram Kisku but he could not arrest accused Kartik Besra because he was absconding. He sent the victim to JSB Civil Hospital for medical examination on 2.11.17 and to the Court for recording her statement U/S 164 CrPC, collected the medical report, drew sketch map of the P.O. and after completion of investigation, he submitted formal charge-sheet U/S341/376(2)(i)/376(D) IPC R/W Section 6 of POCSO Act against accused Ram Kisku and Kartik Besra. He did not seize any document regarding age of the victim and Radiological examination of the victim was also not done during the time of investigation. Nothing was done to ascertain the age of the victim. Though victim was a school going and she was reading in Class-VII at the time of occurrence, but he did not seize the school certificate to ascertain her age. During cross-examination, he deposed that prior to filing of the FIR nothing was informed by the informant to their P.P. regarding the alleged incident. The delay for lodging the FIR is not explained.

17. After going through the entire evidence on record, it is found that victim gave two different statements in her examination-in-chief and cross-examination respectively. In her cross-examination, victim clearly stated that actually no sexual act took place between her and accused and according to advice of villagers, her father lodged the FIR and she deposed before the Court as tutored by her father. It is also found from the evidence of the informant and mother of the victim that initially they did not know the name of the accused but they knew that Ram Kisku was present. Interestingly, informant did not ask any question to Ram Kisku regarding the alleged incident on very night or on next day morning. Nothing was revealed from Ram Kisku as stated by the informant. Though it was stated by the informant that two Adivashi boys brought his daughter to his home at midnight but one of said boys clearly stated that he had no knowledge about the incident. The victim stated that she reported the matter to one Sapal Tudu but he was not examined. Medical evidence did not support the alleged sexual intercourse between the victim and accused. No any observation was made by doctor in medical report for which prosecution did not examine the M.O. PW 5 is the person who allegedly took the victim on very night of the incident but he did not support the prosecution story for which prosecution side declared him hostile and learned P.P. cross-examined him and pointed out his statement recorded by the I.O. U/S 161 CrPC but he denied the facts. Other witnesses heard about the incident from informant on next day. Learned defence counsel pointed out that occurrence took place on 06.10.2017 and FIR was lodged on 01.11.2017. This delay was not explained either in the FIR or in his later deposition. The informant only stated that he convened a village meeting but no any evidence was produced to support this fact. If any village meeting was held regarding the incident, that must have to be mentioned in the FIR. Unfortunately, no such statement was mentioned in the FIR by the informant. It is the duty of the prosecution to prove its case beyond reasonable doubt. If prosecution has proved the case against the accused beyond reasonable doubt, then only, burden would lie upon the accused to rebut the prosecution story by giving evidence. In present case at hand, prosecution created doubt regarding the alleged incident because victim herself stated that actually nothing was happened. As tutored by her father, she deposed before the

Court. According to learned defence counsel, delay in lodging FIR, different version of the victim in her deposition and non-production of material witness Sapal Tudu and denial of facts by material witness (PW 5) castes doubt upon the prosecution story and this doubt goes to the accused as benefit. Therefore, learned defence counsel has vehemently argued that prosecution failed to prove its case beyond all reasonable doubt. The learned P.P. also admitted that medical evidence did not support the prosecution story for which he did not examine the M.O. The victim also stated different statement in her examination-in-chief and cross-examination. Therefore, she cannot be treated as wholly reliable witness. The other witnesses also failed to support the prosecution story. Therefore, according to learned P.P., it becomes difficult for prosecution to prove the case against the accused beyond all reasonable doubt. After considering the submissions from both sides, I have found that the victim in her cross-examination clearly denied the allegation leveled against the accused. According to her, nothing was happened between accused and victim. On the other hand, the accused during his examination U/S 313 Cr.P.C, admitted that he had relationship with the victim and they maintained good relationship for a period of 5 years prior to the incident. The victim knew him 5 years prior to the incident. On the other hand, victim stated that she did not know the accused. The informant also showed ignorance about the identity of the accused but how they knew the name of the accused, is remained dark during entire trial. So, PW 1 and her father, the informant is found to be unreliable witness. As prosecution failed to establish the case against the accused beyond all reasonable doubt, so, rebuttal evidence from the side of accused does not arise. In this case, the version of victim has created doubt and this doubt goes to the side of accused as benefit. The point mentioned above is remained as not established beyond all reasonable doubt. Accused is not found guilty.

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ORDER

18. Prosecution failed to prove the case U/S 6 of POCSO Act against accused Kartik Besra beyond all reasonable doubt. Accused is acquitted on benefit of doubt and set at liberty. His bail bond is cancelled.

- Seized article, if any, shall be disposed of according to law. 19.
- A copy of the Judgment shall be given to the District 20. Magistrate, Chirang for information.

Given under my sign and seal of this Court on this the 31st day of August, 2019, at Kajalgaon, Chirang.

De byay yok Makauf (D.J. Mahanta) 31/8/19 Special Judge, Chirang, Kajalgaon

Dictated and corrected by me,

<u>APPENDIX</u>

Prosecution witness:

PW 1 – Victim Miss X (name is withheld)

PW 2 – Sri Alma Hasda (Informant)

PW 3 – Sri Mongal Soren

PW 4 - Smt. Shanti Soren Hasda

PW 5 – Sri Sakti Basumatary

PW 6 - SI Hasthaisula Brahma (I.O.)

Prosecution Exhibit:

Ext-1 Statement of the victim U/S 164 CrPC

Ext-2 FIR

Ext-3 Sketch map

Ext-4 Charge-sheet

Material Exhibit (Prosecution):

Nil

Defence Witness:

Nil

Defence Exhibit:

Nil

(D.J. Mahanta)
Special Judge,
Chirang.
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