IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.34/2017

(U/S: 420 IPC R/W9/11 of the Prohibition of Child Marriage Act/6 of POCSO Act)

State
Versus
(1) Kantiram Boro @ Kancha,
S/o- Sri Gopal Boro,
Vill- No.3 Paneri,
PS-Paneri, Dist-Udalguri.
(2) Ritul Daimari,
S/o- Late Bhagram Daimari,
Vill- Pachnai K.,
PS-Orang, Dist-Udalguri

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri M.C. Narzary, Advocate.

Evidence recorded on: 9.10.18, 12.12.18, 24.1.19, 26.2.19.

Argument heard on: 29.5.2019. Judgment delivered on: 10.6.2019.

<u>JUDGMENT</u>

1. The prosecution case, in synopsis, is that on 31.8.2017 the informant Hemchandra Daimari lodged a written report with the Officer-in-charge of Paneri PS alleging, inter-alia, that on 20.5.2017 his minor daughter, aged about 15 years (real name is withheld, henceforth referred as the victim) on good faith kept his daughter at the house of the accused Kantiram Boro @ Kancha for her treatment. Later, on 15.8.2017 accused kantiram Boro fraudulently and breaching his trust after marrying his daughter without his

knowledge cohabited with her and the other accused Ritul Daimary colluded with accused Kantiram Boro in solemonising the marriage of his daughter.

- 2. On receipt of the written report and treating the same as the FIR the Officer-in-charge of Paneri PS registered a case vide Paneri P.S. case No.69/2017 U/S 420 IPC R/W Section 9/11 of the Prohibition of Child Marriage Act/6 of POCSO Act and commence the investigation of the case. On completion of investigation police submitted the charge-sheet U/S 420 IPC R/W Section 9/11 of the Prohibition of Child Marriage Act/6 of POCSO Act against the accused persons Kanti Ram Boro @ Kancha and Ritul Daimari to face trial.
- 3. On receipt of the charge-sheet cognizance of the offences were taken and court process was issued to ensure the presence of the accused persons. In obedience to process accused persons appeared to face trial and they were supplied with the copies of documents furnished U/S 173 Cr.P.C.
- 4. Whereupon my learned predecessor in office on perusal of the relevant materials on record found a prima-facie case made out and accordingly framed formal charges against the accused persons Ritul Daimary and Kantiram Boro U/S 420 IPC R/W Section 9/11 of the Prohibition of Child Marriage Act/6 of POCSO Act and the same on being read over and explained to them to which the accused persons pleaded not guilty and claimed to stand trial.
- 5. At the trial the prosecution has examined seven witnesses including the informant, victim, M.O and I.O. of the case and also relied on certain documents mark as exhibits.
- 6. On closure of the prosecution evidence the statements of the accused persons were recorded U/S 313 Cr.P.C. They have taken plea of complete denial and led no evidence for defence.
- 7. In the light of the above perspective, the points for determination in the present case are set up and framed as:-

- (i) Whether the accused in between 25.7.17 to 15.8.17 at No.3 Panery under Panery P.S. cheated Hemchandra Daimary dishonestly marrying his daughter Kanchami Daimary by Kanti Ram Boro and thereby committed an offence punishable under Section 420 IPC?
- (ii) Whether the accused Kanti Ram Boro on 15.8.17, being a male above eighteen years of age, contracts marriage with Kanchami Daimariy, a girl aged about 15 years and thereby committed an offence punishable under Section 9 of the Prohibition of Child Marriage Act?
- (iii) Whether the accused Ritul Daimary participated in the marriage of Kanti Ram Boro with Kanchami Daimariy, a girl aged about 15 years, and thereby committed an offence punishable under Section 11 of the Prohibition of Child Marriage Act?
- (iv) Whether the accused Kanti Ram Boro committed aggravated penetrative sexual assault upon Miss Kanchami Daimariy, aged about 15 years, and thereby committed an offence punishable under Section 6 of POCSO Act?
- 8. I have heard arguments advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

9. PW1, Hem Chandra Daimary is the first informant of the case. According to his evidence victim is his daughter and she was around 15 years old at the time of occurrence. At the material time his daughter was suffering from skin disease. When accused Kanti Ram Boro came to know as to her suffering from skin disease he assured that he would cure the skin disease of his daughter. In stead of curing the skin disease of his daughter, the accused Kanti Ram Boro rather secretly solemonised his marriage with his daughter without informing him. On getting the information he lodged the FIR which is marked as Ext.2 wherein Ext.2(1) is his signature. In a query to the court he stated that after marriage both the accused Kanti Ram Boro and his daughter stayed together for one month as husband and wife. At the time of occurrence

his daughter was 18 years old. After lodgment of the FIR his daughter was recovered by police and handed over to his custody.

- 10. In cross-examination he has stated that he resides at Guwahati. The victim was born from his first wife. His first wife had already died. During the subsistence of marriage with the first wife he married another lady who stayed at Guwahti with him. After the death of his first wife the victim was brought up at the house of the accused Ritul Daimary. Accused Ritul Daimary is his own cousin brother. His another brother Rabiram Daimary informed him about the marriage of his daughter with the accused Kantiram Daimary. After taking zimma of the victim girl she was given zimma to his brother Rabiram Daimary to look after her. Thereafter, he went to Guwahati. He gave expenses from his own for looking after his daughter by Rabiram. The FIR was written by one person as per the dictation of the Officer-In-Charge of Paneri PS. Accused Ritul Daimary is the elder brother of victim girl. Accused Kantiram resides with his family members. He does not know whether his daughter willingly married with Kantiram. He has denied the defence suggestion that he filed this case at the instigation of his elder brother Rabiram Daimary.
- 11. PW2, Dr. Amit Rajbangshi is the doctor who examined the victim on 1.9.2017 in connection with Panery PS case No.69/17 U/S 420 IPC R/W Sec.9/11 of Prohibition of Child Marriage Act, R/W Sec. 6 of POCSO Act. On examination, he found the following:-

Physical examination:-

Height- 162 cm, weight- 56 Kg, teeth- 30 Nos., axillary hair,, pubic hair, Hymen etc are refused to examine by the victim, marks of violence- no sign of physical injury over exposed area, LMP- 2.8.17.

Smear examination – not taken(victim refused sexual examination).

RADIOLOGICAL EXAMINATION:-

X-ray for age determination: - Approximate age 17-18 years.

Ultrasonography of abdomen on 4.9.17 by Sinologist Dr. A. Deka reported as normal echo feature of organ imaged.

The doctor opined that-

- (1) Pregnancy test normal.
- (2) Radiological age approximately 17-18 years.
- (3) Victim and father refused sexual examination.
- (4) USG shows normal echo feature of organ imaged.

Ext.1 is my report and Ext.1(1) is my signature.

- 12. PW3, Topeswari Daimari is the grandmother of the victim. It emerges from her evidence that the victim who is the daughter of the informant was staying with her grandmother since before the incident which had occurred in the month of July, 2017. On the day of occurrence the victim was taken to her another grandmother's house due to suffering from skin disease on her leg. Accused Ritul Daimaimay who is the son of the another grandmother of the victim took the victim to the house of accused Kantiram Boro who claimed himself as village quack having capability of curing skin disease. The accused Kantiram Boro also told that in order to cure the skin disease the victim had to be kept in his house. Thereafter, one day accused Ritul Daimary informed over telephone to his brother Thepra Daimary that the victim had already been married with accused Kantiram Boro where she was staying for her skin treatment. The matter was informed to the father of the victim who was staying at Guwahati. Then the father of the victim lodged an FIR before the police and the victim was recovered.
- 13. In cross-examination she has revealed that she is also one of the grandmothers of the victim. They do not have good relation with the family of accused Ritul. When the victim was five years old her mother died. During the subsistence of the first marriage the father of the victim married another woman and stayed at Guwahati. The victim was brought up in the house of the accused to look after her when she was promoted to class VIII. Before that the victim was staying at Udalguri with another grandmother. She only heard that the victim was taken to the house of the accused Kantiram for treatment of her skin disease. She did not witness the solemnisation of marriage between the accused Kantiram and the victim. After recovery the victim by police she stayed in her house for about 7 months. After recovery of the victim initially her father

took her zimma on execution of a bond. She has denied the defence suggestion that victim was properly kept at the house of the accused Ritul Daimary as per the consent of her father and when she suffered from skin problem the other accused Kantiram Boro treated her as per the consent of the family members of the victim.

- 14. PW4, Tarzu DAimari has testified to the effect that the occurrence took place in the month of July, 2017. The victim was staying with her grandmother since before the incident. On the day of occurrence the victim was taken to her another grandmother's house as she was suffering from skin disease on her leg. From the house of the accused Ritul Daimaimay who is the son of the grandmother of the victim, the victim was taken to the house of the accused Kantiram Boro who claimed himself as a village quack having capability of curing skin disease. The accused Kantiram Boro also told that in order to cure the skin disease completely the victim was to be handed over to his custody for some days. Accordingly victim stayed in the house of the accused Katiram Boro. Thereafter, one day accused Ritul Daimary informed them over Telephone that the victim had already given in marriage with the accused Kantiram Boro. The matter was informed to the father of the victim and the father of the victim lodged an FIR before the police and the victim was recovered.
- 15. In cross-examination he has stated that accused Ritul Daimari is his uncle's son. He did not witness the incident nor did he witness the marriage between the accused Kantiram and the victim. They have stained relation with the accused Ritul. He has denied the defence suggestion that due to animosity with the accused Ritul he has falsely deposed that accused Ritul colluded with the accused Kantiram Boro to facilitate in marrying the victim.
- 16. PW5 is the victim of the case. As per her testification the incident occurred on 15.8.17. Her father at that time stayed at Guwahati. Her mother died about 5/6 years ago. So, she used to live alone in her house by preparing her own meal and also attended school. Since she was suffering from some skin disease in her hands and, as such, her aunt's son accused Ritul Daimary

told her that she would get relief from her disease if she took local treatment from one kantiram Daimary. Then she alongwith Thepkang Daimary, as per the advice of her brother Ritul Daimary, went to the house of kantiram Daimary for the treatment of her skin disease. From the month of July till the date of occurrence i.e. on 15.8.17 she had been staying at the house of accused Kanti Ram Boro for treatment of her disease. A talisman (Tabiz) was also given by accused Kanti Ram Boro to wear in the right arm and after wearing of the Talisman (Tabiz) she got relief in her mind as well as the skin disease. She could also give concentration to her studies. On 15.8.17 accused Kantiram Boro married her though she was not aware of marriage. After the marriage on 15.8.17 she stayed with accused Kanti Ram Boro for another 15 days. Thereafter, one day her father came to the house of the accused Kantiram Boro to take her back. Her father also lodged an FIR in this regard. Police sent her for medical examination and also got her statement recorded before the MagistrateU/S 164 Cr.P.C. Ext.3 is her statement recorded U/S 164 Cr.P.C. Ext.3(1) is her signature. On the day of solemnizing her marriage with the accused kantiram Boro other accused Ritul Daimary was also present.

17. In cross-examination, she has stated that during the life time of her mother another woman was married by her father and since then he has been staying in Guwahati with his second wife. She has also learnt that her father in the meantime married the third wife after the death of the second wife and she is also staying with her father. After the death of her mother about 5 to 6 years ago she initially stayed with her aunt at Udalguri and then shifted to the house of her another aunt's house and accused Ritul Daimary is the son of the said aunt. Accused kantiram Boro is a village quack. He stayed with his father and other family members. Many people came to his house for the local treatment of different diseases every day. She did not tell to any one who used to come to the house of Kantiram Boro as regards the solemnisation of her marriage with him. She was living freely in the house of the accused Kantiram Boro. The family members of the accused Ritul Daimary, who is her brother, also used to visit the house of the accused Kantiram Boro whenever they suffered from ailments for home remedy. When she was staying at a residential hostel at Udalguri during her study before the incident one Biran

Narzary was the watchman of that hostel. She has denied the defence suggestion that she had grown love affair with Biran Narzary while she was staying at hostel. After the incident she had undergone a course of security in Guwahati alongwith Geyem Boro. She has deposed before the court as per the dictation of her aunt Topeswary (PW3) who has come with her. She was given Zimma to her father in connection with this case but on her own volition rather preferred to stayed at the house of her aunt Topeswary Daimary.

- 18. PW6 is Nandalal Sarkar. His evidence depicts that he knows both the victim and the accused persons. About 2 years ago one day police came to his home and recorded his name and address and thereafter they left his house. Accused kantiram Boro is quack (Kabiraj) by profession. Many people visit his house regularly for treatment. He saw the victim one day in the house of the accused Kantiram Boro.
- 19. In cross-examination he has revealed that accused Kantiram Boro resides with his parents, sister etc. together. He does not know anything regarding marriage between the accused Kantiram Boro and the victim. Nobody told him about marriage of Kantiram Boro with the victim.
- 20. PW7, Ibrahim Khalilulla is the investigating officer of the case. His evidence displays that on 31.8.17 he was working as ASI of police at Paneri PS. On that day one Hem Chandra Daimary lodged an FIR with the Officer-In-Charge of Paneri PS. On the basis of the FIR Paneri PS case No. 69/17 under section 420 IPC, R/W Section 9/11 of Prohibition of Child Marriage Act, R/W Section 6 of POCSO Act was registered and endorsed his name to investigate into it. During the course of investigation, he visited the place of occurrence, recorded the statement of witnesses U/S 161 Cr.P.C. and prepared a sketch map of the place of occurrence. During the course of investigation, he also seized one birth certificate of the victim and the same was later given in zimma to the informant. Exhibit 4 is the seizure list. Exhibit 4(1) is his signature. Exhibit 5 is the sketch map. Exhibit 5(1) is his signature. On conclusion of the investigation he handed over the case diary to the then Officer-In-Charge, Sorab Ali for taking necessary action. Thereafter, the Officer-In-Charge, Sorab

Ali submitted the charge sheet against the accused persons U/S 420 IPC, R/W Section 9/11 of Prohibition of Child Marriage Act, R/W Section 6 of POCSO Act. Exhibit 6 is the charge-sheet wherein Exhibit 6(1) is the signature of Sorab Ali, the then O/C, Paneri PS which he knows.

- 21. In cross-examination, he has stated that as per the FIR the date of occurrence is 15.8.17 and the same was lodged on 31.8.17. No explanation has been cited in the FIR as to the cause of delay in lodging the same. In connection with this case GD entry was recorded vide GDE No. 642 dated 31.8.17. The extract copy of the GD entry is not appended with the case diary. He did not seize the birth certificate of the victim. Statement of the victim under section 164 Cr. P.C. was recorded on 1.9.17. He has shown the house of the accused in the sketch map marked as A. He has not shown any other houses of Kantiram if there was any such house. He has denied the defence suggestion that he had not properly investigate the case.
- 22. From the foregoing analysis of the evidence on record, it demonstrates that the evidence of the victim (PW5) is pivotal to bring home the charges levelled against the accused persons in the attending facts and circumstances of the case. But on scrutiny of the testimony of the victim it is seen that the testimony of the victim (PW5) is not inspiring enough to bring home the guilt of the accused persons so much so that though it has been alleged in the FIR (Ext.2) lodged by the informant (PW1) that the accused Kantiram Boro married the victim and cohabited with her on the pretext of curing her skin disease but the evidence of the victim has totally brushed aside the material particulars of the case as she has categorically disclosed that she was kept in the house of the accused by her brother accused Ritul Daimary for treatment of her skin disease in hands. She remained in the house of the accused Kantiram Boro from the month of July till the date of occurrence i.e. on 15.8.17. While she was staying at the house of accused Kantiram Daimary for treatment of her disease he gave her a talisman (Tabiz) to wear in the right arm and after wearing of the same she got relieved in her mind and disease. She could also give concentration to her studies after wearing the talisman. On 15.8.17 accused Kantiram Boro married her though she was not aware of marriage.

After the marriage on 15.8.17 she stayed with accused Kantiram Boro for another 15 days. After lodgment of the FIR by her father (PW1) she was brought from the house of the accused kantiram Boro. But her evidence that Kantiram Boro though married her but she was not aware of marriage is nothing but a conflicting statement. Had the accused Kantiram Boro married the victim she would have been able to say categorically as to solemonisation of her marriage with the accused Kantiram Boro, who was a major girl of 18 years old which is confirmed by her own father (PW1) being supplied by radiological examination report of Medical Officer (PW2). Moreover, she stated that at the time of solemonisation of marriage with the accused Kantiram Boro, her brother accused Ritul Daimari was present is not supported by the evidence of any other prosecution witness. Further more, the victim PW5 has not stated as to cohabitation with the accused after her marriage with the accused Kantiram Boro. In cross-examination, she has stated that many people came to the house of the accused kantiram Boro, who resides with his family members, to get treatment for various diseases. When she was staying at the house of the accused Kantiram Boro she was living freely in the house of the accused. It seems that she did not disclose to any person who came to the house of the accused Kantiram Boro as regards her marriage solemonisation with Kantiam Boro.

- 23. When there is no specific evidence from any of the witnesses including the evidence of victim herself to support her marriage with the accused Kantiram Boro, the solemonisation of marriage of the victim with the accused Kantiram Boro is not at all believable and the same is bereft of truthfulness.
- 24. The informant (PW1) and other witnesses PW3 and PW4, who are relatives of the victim (PW5) have failed to adduce reliable evidence to establish the marriage of the victim (PW5) by the accused kantiram Boro on the pretext of treating her skin disease though it is an admitted fact that the victim was brought to the house of the accused kantiram Boro as per the consent of the victim and the informant who is a village quack to cure her skin disease. So, it is easily discernable that accused kantiram Boro was known to the informant and the victim (PW5) and her relatives PW3 and PW4 and, as

per the consent of the informant (PW1), his victim daughter was kept in the house of the accused kantiram Boro for treatment of her skin disease ailment.

- 25. So, in the back drop of such a factual situation in the light of the evidence on record, the solemonisation of marriage by the accused kantiram Boro with the victim (PW5) in absence of plausible evidence in that regard that too from the victim (PW5) herself who was not at all aware of her marriage with the accused Kanti Ram Boro has rendered it doubtful as to marrying of the victim (PW5) by the accused when there is no school certificate to establish that victim was minor when her marriage was solemonised with the accused. On the other hand, the evidence of doctor (PW2), who examined the victim on radiological examination found the age of the victim approximately in between 17-18 years at the time of occurrence. As per the evidence of her father PW1 (informant) the victim was 18 years old at the time of occurrence. That apart, PW2 also did not find pregnancy of the victim at the time of examination and the victim and father of the victim also refused to undergo sexual examination would invariably negate the prosecution accusation that accused Ritul Daimari dishonestly colluded with accused kantiram Boro in solemonising marriage of the victim (PW5) with the accused kantiram Boro and, thereby committed cheating. Further more, there is no documentary evidence in the form of birth certificate to establish that victim was a minor girl. On the other hand, as per the medical report (Ext.1) of the doctor (PW2) also, the age of the victim was found around 17-18 years on radiological examination from which it can be safely inferred in absence of birth certificate that the victim was a major girl at the time of occurrence.
- 26. That being the position, in absence of cogent, consistent and reliable evidence, there is no material to attract the Section 9 and 11 9/11 of Prohibition of Child Marriage Act against the accused persons. In addition to above, there is also not a fig of evidence in the testimony of the victim (PW5) as discussed above that the accused kantiram Boro committed aggravated penetrative sexual assault upon her at the time of occurrence.

27. Having taken into cumulative consideration of the evidence on record, I have come to the opinion that the prosecution evidences are in discrepant, contradictory and inconsistent to support the material particulars of the case and, as such, it is disbelieved to prove the charges levelled against the accused

persons for which accused persons are at least entitled to benefit of doubt.

28. In the result, I am constrained to hold that the accused persons Kanti Ram Boro and Ritul Daimari are not guilty U/S 420 IPC R/W 9/11 of the Prohibition of Child Marriage Act/6 of POCSO Act. Therefore, they are acquitted

thereunder and set them at liberty forthwith.

29 Bail bond executed by the accused and the surety shall remain in force

for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 10th day of June,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.