CAUSE TITLE PCSO Case No. 81/15

Informant: Sri Silash Takri,

S/o- Late Toriful Takri,

R/o- No. 10 Line of Lengrai Tea Estate,

PS- Tengakhat, District- Dibrugarh.

Accused: Sri Asanand Bania,

S/o- Sri Dilip Bania, R/o- Lengrai Basti, PS- Tengakhat, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Mr. UK Saha, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> PCSO Case No. 81/15 G.R. Case No. 1771/13

> > State of Assam

-Vs-

Sri Asanand Bania

Charges: Under Section 4 POCSO Act.

Date of evidence on : 27-01-16, 26-02-16, 29-03-16, 04-05-16 & 31-05-16.

Date of argument : 18-07-18. Date of Judgment : 01-08-18.

JUDGMENT

- 1) The prosecution case in a narrow compass is that on 11-06-13, at about 7/7:30 pm, Sri Ashananda Bania (hereinafter the accused) committed rape on the nine year old victim 'X'. He tempted the victim and induced her to go with him to Lengrai Tea Estate and forcefully committed rape on the nine years old victim and dissuaded her from disclosing about the incident. When the victim's father Sri Silash Takri learned about the incident, he lodged an ejahar with the police which was registered as Tengakhat PS Case No. 57/13 under Section 376(f) of the Indian Penal Code (IPC in short).
- 2) The investigating officer (IO in short) embarked upon the investigation. He went to the place of occurrence and prepared the Sketch-Map. He recorded the statements of the witnesses and forwarded the victim to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure. The victim was also forwarded for medical examination. On finding prima facie materials, he submitted Charge-Sheet against the accused

- under Section 376(f) IPC.
- 3) On appearance of the accused, copies were furnished and as this case is triable by the Sessions Judge, the case was committed to this Court vide order dtd. 27-01-14 passed by the learned Chief Judicial Magistrate, Dibrugarh in GR Case No. 1771/13. Subsequently, the case was transferred to the Court of the Assistant Sessions Judge. Trial commenced. Charge under Section 376(f) was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence. The learned Assistant Sessions Judge recorded the statement of Sri Silash Takri and uncovered that this case also falls under the provision of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short). The learned Assistant Sessions Judge, thereafter, forwarded the case to this Court, as the POCSO Act is beyond his jurisdiction. After hearing both the sides, a formal charge under Section 4 POCSO Act was framed, read over and explained to the accused. The accused abjured his guilty and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of nine witnesses including the medical officer (MO in short) and the IO and the defence cross-examined the witnesses to refute the charges.
- 5) I have heard the arguments forwarded by both the sides.

Point for determination:

i. Whether on 11-06-13, at about 7:30 pm, the accused committed penetrative sexual assault on the nine years old victim 'X'?

Decision thereon and the reasons for the decision:

- 6) To decide the case in its proper perspective, it is necessary to cull out the evidence.
- 7) The victim 'X' testified as PW-1 that the accused is her brother-in-law who

married her elder sister Smti. Smriti Takri. The incident took place in the year 2013. At about 6:00 pm, she was in the house, while her mother was cooking and her father was having his bath. At that time, the accused called her and asked her to bring the torch light to watch frogs. Then they reached a drain named as Phukan Bari Nulla. The accused then stopped her and removed her panty and committed rape on her. He gagged her and she was unable to scream. The accused then demanded that she should not divulge about the incident. She experienced pain in her private part. She returned weeping and narrated the incident to her parents. In the evening, she along with her father went to the police station where her father lodged the FIR. The police also recorded her statement. On the next day, the police took her to Assam Medical College & Hospital at Dibrugarh. She was also forwarded to the Magistrate who recorded her statement. Ext. 1 is her statement and Ext. 1(1) is her signature.

- 8) Her cross-examination will be discussed at the appropriate stage.
- 9) The testimony of the victim is consistent to her statement under Section 164 CrPC. Her statement under Sections 164 and 161 CrPC remained uncontradicted. She was confronted by the defence and she was cross-examined in extenso, but her evidence remained uncontradicted.
- 10) This evidence of PW-1 is supported and corroborated by the evidence of PW-2 Sri Silash Takri. He testified that the accused is his son-in-law and the victim is his daughter. The incident took place in the month of June, 2013. On the day of the incident, his wife was working in the kitchen. After half an hour, his daughter returned crying and she narrated the incident to him. Her mother was also present at that time. His daughter stated that the accused person took her near the Phukan Bari Bagan in the pretext of catching frogs and he committed rape on her near the drain by gagging her mouth with his hands. They checked her private part and they noticed that her vagina was swollen and she could not urinate properly for almost one week. At that time, the victim was wearing a skirt and frock. They removed her garments and changed her clothes and took her to the Thana. He then lodged an ejahar which was written according to his narrative. Ext. 2 is the ejahar and Ext. 2(1) is his signature. On the next day, she was taken to Assam Medical College & Hospital at Dibrugarh accompanied by her mother. At the time of the incident, the accused used to reside in the garden quarter in the line

- which is near his house. After the incident, the accused was thrown out of the quarter by the Garden Manager on the compliant of the public. Thereafter, the accused started to reside in his own line which is some distance away.
- 11) This witness was also cross-examined in extenso. His evidence also remained uncontradicted and uncontroverted.
- 12) It is pertinent to mention at this stage that both PW-1 and PW-2 testified that the incident occurred in the year 2013. PW-1's statement Ext. 1 clearly depicts that her statement under Section 161 CrPC was recorded on 12-06-13. It is clear from the Ext. 1 that the incident occurred on 11-06-13. The FIR reveals that the incident occurred on 11-06-13. The MO examined the victim on 12-06-13 at about 1:15 pm. Ext. 3 is the Medico-legal Report and Ext. 3(3) is the signature of the MO. The victim's evidence is also supported and corroborated by the evidence of her mother.
- 13) Smti. Jhorna Takri testified as PW-3 that the accused is her elder daughter's husband. The victim is her daughter. The incident took place in the month of June, 2013. On the day of the incident, at about 6:00 pm, the accused asked her daughter to bring a torch light so that they could go and catch frogs and then the accused took her daughter with him to catch frogs. Thereafter, her husband came to the house. After one hour, 'X' returned weeping and she informed them that the accused gagged her and committed rape on her in the nearby garden. She noticed dirt over the victim's body. Then she removed the victim's undergarment and noticed that undergarment was wet and there was blood stains in her vagina. Thereafter, she along with her husband and brother Ajush and her daughter went to the police station and lodged an ejahar. After the incident, her daughter was unable to pass urine upto three days, because she was experiencing pain in her vagina. At the time of the incident, her daughter was nine years of age. On the next day, the police brought her daughter to the hospital for medical examination. The police also recorded her statement. Her evidence further proceeds that the accused managed to flee when the police tried to apprehend him.
- 14) This evidence of PW-1, 2 and 3 remained uncontradicted and uncontroverted. PW-3 was also cross-examined in extenso, but her statement under Section 161 CrPC remained uncontradicted and uncontroverted. All the three witnesses were cross-examined in extenso, but it can be perceived and

- deciphered that with intelligent equivocation, the learned defence counsel tried to divert the attention towards the location of the place of occurrence. However, it is very clear that the statement under Section 161 CrPC of PWs-1, 2 and 3 remained uncontradicted. The IO was not cross-examined regarding any contradiction under Section 161 CrPC.
- 15) I would like to draw the attention towards the cross-examination of PWs-1, 2 and 3. The victim has testified in her cross-examination as PW-1 that when the accused called her, her parents allowed her to go with him. She did not meet any person while she proceeded along with the accused. There is a Church near the drain and Phukan Bari Tea Estate and the Church is managed by Sri Chatri Paul. They went up to the Church. She denied the suggestion that she requested the accused to go out in search of frogs. She denied the suggestion that she fell into the drain. She also denied that the accused picked her up from the drain and took her home and went to bring medicine for her injuries. She admitted that she was wearing a frock and panty at the time of the incident. She stated that the police did not seize her garments which she was wearing. She admitted in her cross-examination that the accused pulled down her panty with both his hands and rolled her on the ground while she struggled to set herself free. She again admitted in her cross-examination that the accused did not accompany her back home and she narrated the incident to her mother and she sustained pain on her private part while urinating. She also informed her father. It is clear that her evidence was affirmed by her cross-examination rather than contradicted.
- 16) Similarly, the cross-examination of PW-2 was also not of much help. Further, he admitted in his cross-examination that he did not have a good relationship with the accused after he married his elder daughter, but thereafter, the relationship improved. His elder daughter eloped with the accused. He further testified in his cross-examination that on the alleged evening, at about 7:30 pm, his younger daughter went out with the accused, as the accused asked for a torch. After half an hour, his younger daughter returned home. When his daughter reached home, she was still wearing her clothes, but the clothes were covered with dirt.
- 17) Thus his cross-examination affirms and substantiates the evidence of his wife that when their daughter returned home on the relevant evening, she was covered with dirt. His cross-examination also affirms that the accused fled

- after the incident, because he testified in his cross-examination that he along with his wife went to the accused person's house, but he could not find the accused.
- 18) Thus, the subsequent conduct of the accused is also relevant as expounded by Section 8 of the Indian Evidence Act, 1872 (the Evidence Act in short).
- 19) Both PWs-2 and 3 denied through their cross-examination that they had acrimonious relationship with the accused, because their elder daughter eloped with him. They have denied that the accused has been falsely implicated as they have an acrimonious relationship with him. This theory of lodging a false case against the accused, because their elder daughter eloped with him, has no leg to stand. If PWs-2 and 3 wanted to rope in the accused person in a false case, they would not have used their nine year old daughter to behave in such an immoral way with false charges of a deplorable act against her own brother-in-law. It is evident through their cross-examination that they had a cordial relationship and this is why the victim was allowed to go out at night with the accused and help him with the torch light. PW-3 also admitted in her cross-examination that there is a Church near the place of occurrence. The theory of false accusation due to an acrimonious relationship cannot be accepted. Moreover, the submissions that there was no possibility to commit rape on a place where there are other residences and a Church, also cannot be accepted. The place of occurrence has been properly described vide Ext. 5. It is clear that Ext. 'A' is the place of occurrence, Ext. 'C' is the Phukan Bari Drain which has been accurately described by the victim. 'D' is the tea garden and 'B' is the Tinikuria Gaon. Ext. 5 has been prepared by the IO Sri Biraj Kumar Dutta.
- 20) The evidence of PWs-1, 2 and 3 is also supported and corroborated by the evidence of the MO Dr. Nibedita Shyam who testified as PW-6 that on 12-06-13, she was working as GDMO in the Department of Forensic Medicine, Assam Medical College & Hospital at Dibrugarh. On that day, she examined the victim in connection with this case and found the following:

On genital examination: Vulva is reddened and tendered with fourchette tear which bleeds on touch. Hymen: recent tear present at 6 O' clock position margins of which are reddened tender, oedematous and bleeds on touch and hymenal orifice admits one finger with difficulty. Vagina is reddened and tender on touch. Vaginal smears were taken from posterior

- fornix in and around the vagina result of which does not show any spermatozoa.
- 21) On the basis of Physical examination, Radiological & Laboratory Investigation done on the victim 'X', the MO opined that-
 - Evidence of recent sexual intercourse not detected on her person. However, findings are suggestive of forceful vaginal penetration;
 - ii. Evidence of injury detected on her private parts as described in Form-II 20(b, c & d);
 - iii. Her age is above 9 years and below 12 years.
 - Ext. 3 is the Medico-legal Report wherein Ext. 3(1) to Ext. 3(3) are the signature of the MO.
- 22) From the evidence of PW-6, it is clear that recent tear was found on the hymen of the victim and margins were reddened and tender. There was oedematous and bleeding on touch and hymenal orifice admits one finger with difficulty. The vagina was reddened and tender on touch. According to her opinion, the evidence of recent sexual intercourse not detected on her person, but evidences are suggestive of forceful vaginal penetration.
- 23) In her cross-examination, she testified that hymenal tear may be caused by falling on the ground with force.
- 24) It is clear from the opinion of the doctor that findings are suggestive of forceful vaginal penetration. There is nothing to disbelieve the testimony of the victim. The doctor's evidence confirms that the victim sustained injuries on her vagina immediately after the incident. PWs-1, 2 and 3 have clearly described the assault and the injuries.
- 25) The evidence of PWs-1, 2 and 3 inspire confidence, because their evidence remained uncontradicted and uncontroverted. PW-1's evidence remained consistent throughout. The evidence of other witnesses also supports and fortified the evidence of the victim.
- 26) Sri Ashitosh Nand testified as PW-4 that the alleged incident took place about two years ago. on that evening, at about 8/8:30 pm, the informant along with the victim cane to his house and informed him that the accused committed rape on his victim daughter and he requested him to accompany them to the police station, as he was a VDP member of the locality. Thereafter, he went along with the victim to the police station and he lodged

- an ejahar with the police.
- 27) This witness was cross-examined regarding his omission to state before the IO that the informant and his daughter came and informed him about the incident. The IO was cross-examined, but this omission was not affirmed through his cross-examination. It is thereby held that the evidence of this witnesses also remained uncontradicted and uncontroverted.
- 28) The evidence of PW-1, 2, 3, 4 and 6 is also supported and corroborated by the evidence of Sri Benjamin Kandopan who testified as PW-5 that one day, while he was on duty, he saw the police and when he querried, he was informed that the police had come to Silash Takri's house, as his daughter was raped by the accused person.
- 29) The evidence of PWs-1, 2, 3, 4, 5 and 6 is also corroborated and supported by the evidence of Sri Robin Takri who testified as PW-7 that the accused is his brother-in-law and the victim is his sister. The alleged incident took place in the month of June, 2013. On that day, he reached home at about 9:00 pm and then his parents informed him that the accused committed rape on his sister 'X' by taking her in to the garden situated near their house. He noticed that his sister was weeping. His parents went to the Tengakhat Police Station and lodged an ejahar. On the next day, the police came to his housie and recorded his statement. The police seized one stick from the place of occurrence. Ext. 4 is the Seizure-List and Ext. 4(1) is his signature. His evidence also remained uncontradicted.
- 30) The evidence of PW-1 upto PW-7 is also supported and corroborated by the evidence of Sri Simion Takri who testified as PW-8 that both the accused and the victim are known to him. The incident occurred in the month of June, 2013. On the day of the incident, he was in his house. On the next day, he went to the complainant's house and learnt from him and his wife that the accused committed rape on their daughter on the previous night at about 7:00 pm inside the garden situated near their house. Then the informant Silash Takri lodged an ejahar with the police at Tengakhat Police Station. The police visited the place of occurrence and recorded his statement. The police seized one stick from the place of occurrence. Ext. 4 is the Seizure-List and Ext. 4(1) is his signature.
- 31) Although he testified that he did not know what was written in the Seizure-List, yet this ignorance is insignificant and this does not thwart the evidence.

- 32) The evidence of all the witnesses from PW-1 upto PW-8 is supported and corroborated by the evidence of the IO Sri Biraj Kumar Dutta who testified as PW-9 that on 11-06-13, he was posted at Tengakhat Police Station. On that day, the Officer-in-charge (OC in short) received an FIR and registered a Tengakhat PS Case No. 57/13 under Sections 376(f) IPC and endorsed him with the investigation. He met the complainant Silash Takri in the police station and recorded his statement. He visited the place of occurrence on the same day and recorded the statements of the victim and other witnesses and prepared the Sketch-Map. Ext. 5 is the Sketch-Map and Ext. 5(1) is his signature. He seized a wooden stick from the place of occurrence which was used by the accused for catching frogs. Ext. 4 is the Seizure-List and Ext. 4(3) is his signature. On the next day, he forwarded the victim for medical examination and also for recording her statement under Section 164 CrPC. He made several attempts to arrest the accused, but could not arrest him. He obtained the Medico-legal Report of the victim on 25-06-13. After completion of investigation, he submitted Charge-Sheet against the accused declaring him as absconder. Ext. 6 is the Charge-Sheet and Ext. 6(1) is his signature.
- 33) It is pertinent to mention at this stage that the learned defence counsel laid stress in his argument that the Medico-legal Report depicts that the victim was above nine years and below twelve years. This submission of the learned defence counsel is also taken into consideration. Two years on the higher side of twelve years is taken into consideration and the accused is given the benefit of the two years on the higher side of twelve years and thereby, he is not held guilty of the offence under Section 6 POCSO Act. He was not even charged under Section 6 POCSO Act.
- 34) The learned defence counsel also laid stress in his argument that the victim's garments were not sent for forensic examination. The wooden stick was also not exhibited in the Court. It was also submitted that all the witnesses are related witnesses and they are partisan.
- 35) It is clear that all the witnesses are not related witnesses. PWs-4, 5 and 8 are independent witnesses. There is clinching evidence that the accused is complicit. The victim's evidence is consistent and she has clearly testified and implicated the accused that he committed penetrative sexual assault upon her. The MO's evidence also suggests vaginal penetration.
- 36) The victim's evidence inspires confidence and so thus the evidence of all the

other witnesses. The evidence of all the witnesses remained uncontradicted. Thereby the accused is held guilty of the offence under Section 4 POCSO Act. There is clinching evidence that the accused committed penetrative sexual assault on the victim 'X'.

- 37) I have heard the accused on the point of sentence. He has submitted that he has three minor children and if he is confined behind the bars for several years, his children will suffer immensely. He has contemplated the fate of his children.
- 38) I have considered the facts and circumstances of this case. This is an act of depravity and has to be abhored by the society at large. Such an act has to be deprecated and deterrent and exemplary punishment is the need of the hour.

SENTENCE:

- 39) The accused Sri Ashananda Bania is convicted under Section 4 of the POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 7 (seven) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo RI for 1 (one) month. The period of detention of the accused during investigation and trial is set off with his custodial sentence.
- 40) Destroy the seized articles as per law.
- 41) The victim who has undergone such an ordeal, deserves compensation. This case is thereby recommended for compensation to the District Legal Services Authority, Dibrugarh to decide the quantum of compensation to be awarded to the victim under the Assam Victim Compensation Scheme, 2012.

 Judgment is signed, sealed and delivered in the open Court on the 1st day of August, 2018.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

APPENDIX

List of witnesses:

- 1. PW-1 The victim 'X';
- 2. PW-2 Mr. Silash Takri;
- 3. PW-3 Smti. Jhorna Takri;
- 4. PW-4 Sri Ashitosh Nand;
- 5. PW-5 Sri Benjamin Kandopan;
- 6. PW-6 Dr. Nibedita Shyam;
- 7. PW-7 Sri Robin Takri;
- 8. PW-8 Sri Simion Takri; and
- 9. PW-9 Sri Biraj Kumar Dutta.

List of Exhibits:

- 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 Seizure-List;
- 5. Ext. 5 Sketch-Map; and
- 6. Ext. 6 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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