IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl POCSO Case No. 14/2017

u/Sec. 4 of POCSO Act, 2012

State of Assam

-vs-

Sri Papu Khasta

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence

: Mr. T. Ahmed, learned Legal Aid Counsel.

Dates of recording Evidence: 01.10.2018, 07.01.2019, 21.01.2019, 02.03.2019,

03.06.2019, 01.07.2019, 29.07.2019.

Date of Argument

: 04.09.2019.

Date of Judgment

: 18.09.2019.

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 30.06.2017 the informant namely, Sri Ranjit Ghatowar lodged an FIR with the OC, Gohpur stating inter alia that on 29.06.2017 at about 12.30 PM, the accused Papu Khasta took his minor daughter (name is withheld) to his house and committed rape on her for which his daughter has been undergoing medical treatment at Gohpur Civil Hospital.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused u/s 4 of POCSO Act, 2012.
- 3. The accused who was arrested during the investigation of the case was produced before this court to face trial after submission of charge sheet. As the accused expressed his inability to engage a counsel of his choice to defend him, the learned legal aid counsel was appointed to defend him at the expense of the state. He was furnished with the copies of the relevant documents. Upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the

18/2/10 18/2/10

- accused had committed an offence u/s 4 of the POCSO Act, 2012, the charge was accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.
- 4. During trial, the prosecution examined eleven witnesses in all. The accused was thereafter examined u/s 313 CrPC. His plea was total denial. He refused to adduce any evidence on his behalf. The case was thereafter, argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the victim, who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant, Ranjit Ghatowar. He stated that about a year back, his 9-year-old daughter was taken by the accused on his bicycle from his home. According to him, the accused used to regularly visit his house. On that day after he had gone for his work, the accused came and took his daughter on his bicycle to the center. Later, when he returned from his work place at about 8 PM, upon asking her mother, he could learn from her that the accused had taken his daughter with him. At about 10 PM, the accused brought back his daughter. The accused was under the influence of alcohol and both of them had stains of mud on them. It was raining then. His daughter was washed by her mother. While washing her, her mother noticed blood oozing from her passage of urination. He was called by her mother and shown the injury mark on the victim's body. He soon taken the victim to the Gohpur Civil Hospital and from that place he took her to the Tezpur Medical College and Hospital, where the victim was medically treated for about 15 days. He stated that the accused on that day had left their house after leaving their daughter at home. Later, after the doctor had advised them, he lodged the FIR with the Gohpur Police Station on the same night. He proved the FIR as Ext. 1.
- 6. In his cross, the PW 1 stated that after returning back to her house, the victim did not speak anything about the occurrence as according to him, the accused had threatened her. He further stated that the police did not seize the blood stained clothes of the victim as her mother had already washed her clothes. PW 1 further stated in his cross as it was raining on that night and therefore mud developed all around. He stated that the accused used to take her out earlier but he did not commit any such incident before. He however, stated that he had lodged the FIR on presumption and he did not interrogate his daughter-the victim. He denied to the suggestion that the victim sustained injury by falling from bicycle due to the mud.
- 7. When we examine the evidence of PW 1 along with the FIR- the Ext. 1, we find that in the

FIR the informant had alleged that the accused had taken his daughter to his house at about 12.30 PM and committed rape on her. Further, his evidence shows that his daughter was returned back by the accused at 10 PM and then she did not speak anything about the incident, either to her mother or to her father. It was after, her mother had noticed marks of blood on her private part that her mother informed about the same to him. His evidence further discloses that it was only after the doctor had asked him to lodge an FIR that he lodged the same. His evidence does not disclose anything that shows that the victim had informed him or her mother that the accused had committed rape on her. Contrarily, he stated that he lodged the FIR against the accused only on presumption.

- 8. PW 7- the victim stated that she was 8 years old. According to her, the incident took place about 2 months back. Around noon on that day, when she was playing in her house, the accused came and took her for an outing. According to her, she was taken far away on his bicycle and thereafter, she was asked to go by foot. She was taken to a field and after disrobing her, she was led to sleep on the ground by the accused. She stated that when she asked the accused as to what he has been doing, he stated that he is not doing anything to her. According to her, the accused inserted one of his fingers on her passage of urination. As she cried, the accused pressed her neck and asked her as to whether she wants to die or go to her house. The accused thereafter, inserted two of his fingers but again when she cried, he left her. The accused took her to her house and as she had mud on her body, she was washed by her mother, who then saw blood marks on her private part. Her mother at first thought that the said injury may have been caused by leech. She then told her mother about the incident and her father was hearing her at that relevant time. Her father thereafter, went out in search of the accused. He thereafter took her for medical treatment. She was studying in Class-III at that relevant time. In her cross, she stated that the accused used to take her out earlier. On that day, while returning, they entered into the house of PW 5- Munu Tanti who changed her dress and made her to wear her son's clothes. She then did not reveal about the incident to PW 5. From that place, the accused took her to her house. She also stated that her father does not like the accused.
- 9. When we scrutinize the evidence of the victim along with the evidence of PW 1 and the Ext.1, we find that PW 1 had stated that her daughter had mud stains when she returned to their house on that night as it was raining outside. PW 7, the victim on the other hand stated that her clothes were changed on the mid-way in the house of PW 5 and made her to wear boy's clothes and at that time she did not reveal about the incident to PW 5. According to PW1, Ext. 1 was lodged only after the medical officer examining the victim asked the PW 1 to lodge an FIR. The time period from the victim returning to her house to the relevant time at which the victim was examined by the doctor was considerably long and the according to PV.7, she had narrated about the incident to her mother and her

1810/19

father was hearing then. But the Ext. 1 on the contrary to the version of PW7 alleged that the victim was taken from their house by the accused to his house where he had committed rape on her. PW 7, the victim as noted above discloses nothing like the victim being taken by the accused to his house or she was committed rape by the accused there. Instead, the victim deposed that the accused had fingered her private parts by taking her to a distant field. Had the accused committed the offence in the manner as narrated by PW 7, the Ext. 1 would have definitely reflected that she was taken by the accused to a field where in he had fingered her private parts and not as what we find to have been disclosed by the Ext. 1.

- 10. PW 8 the Medical Officer, Dr. Gitumoni Sonuwal proving the medical examination report of the victim as Ext. 2 stated that on 03.07.2017 she had examined the victim with regard to the instant case. According to her, evidence of forceful penetration is present on the person of the victim but according to her, it does not mean sexual intercourse. No injuries were detected on the other parts of the body of the victim. In her cross examination, she stated she had conducted the examination of the victim with reference to GD Entry No. 615 but she had not mentioned the date on her report. She stated that she found tear of the hymen which admits tip of the little finger. She further stated in her cross that she did not mention anything about swelling, internal bleeding on the private part of the victim. She had also has not mentioned about the age of the injury of the victim. According to her, the injury she had found in the private part of the victim may also be caused by insertion of any sharp object in the private part of the victim and injury may also be caused by falling on a sharp substance. The evidence of PW 8, therefore does not conclusively establish that the injury the victim sustained on her private part can only be caused by fingering and not by falling over a sharp object.
- 11. PW 5, Smti Munu Tanti corroborating the victim- PW 7 stated that both the accused and the victim came to her house at about 8.30 PM and both of them were drenched with mud. The girl was trembling due to cold and they told her that they fell into mud. She then changed the clothes of the victim. The accused had told her that he had taken the victim to his sister's house that the victim then did not state anything to her about the incident. In her cross, she stated that she did not notice any unnatural behaviour on the part of the accused and the victim. The accused took the victim with him telling her that he would leave her at her father's house.
- 12. The evidence of PW 5, therefore shows that both the accused and victim fell on mud on that night. We do not find anything in her evidence which makes her unreliable. Further, we do not find any reason to disbelieve her testimony. It therefore find that the possibility of the victim falling on mud and sustaining injury on her private part due to such fall cannot be ruled out more so when we do not find any cohesive and inspiring evidence to

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show that the injuries found on the private part of the victim was result of fingering by the accused.

- 13. PW 2, Bhagat Majhi stated that on the day of the incident the accused had taken his bicycle from him and thereafter, at night, he returned back and slept with him. On the same night, the informant, Ranjit Ghatowar came and slapped the accused. He then could learn that the accused had done something wrong with the daughter of the informant. Later police called him and returned back his bicycle. He went along with the informant to the place of occurrence which according to him was a field. In his cross, he stated that he has no personal knowledge about the said incident.
- 14. PW 3, Smti Maina Majhi stated that about 1 and 1/2 years back, the accused took launch at her house and thereafter, he went out with the victim, who was 7 years old to an unknown place. Later, she heard that the informant had assaulted the accused as he had taken away his daughter with him. Later, according to her, the informant had lodged an FIR alleging that the accused had kidnapped his daughter. She heard that the victim had sustained crack injury on the place of her urination. In her cross, she stated that she has no knowledge about the said occurrence. She also stated that the victim used to go out with the accused earlier.
- 15. PW 4, Astami Gowala had heard that the accused had committed rape on the victim. She does not know anything about any injury sustained by the victim.
- 16. PW 6, Sanjeeb Tanti is the husband of PW 5, Munu Tanti who corroborated PW 5 and stated that both the accused and the victim came to their house on that night at about 8.30 PM. Both of them were drenched in rain and his wife changed the clothes of the victim. The accused thereafter, took her back to her father's house. They told him that both of them had come from a place named Khabagaja. The accused left his bicycle in their house but on the next day, some other person had taken back the bicycle from their house. He did not notice any unnatural behaviour of the victim at that relevant time. He stated that the accused had taken back the victim apprehending that the parents of the victim would rebuke him.
- 17. The case has been investigated by three Investigating Officers, namely, PW 9, Sukleswar Deka, PW 10, Indreswar Gogoi and PW 11, Md. Abdul Matleb Choudhury. PW9 in his cross examination stated that the investigation started on the basis of GD Entry made in that regard. He further stated that after receiving the 'Ejahar' on the next day, another GD Entry was made which according to him is required to be entered after receiving an FIR. He stated that the first GD Entry was 615 dated 29.06.2017. He has not collected any document with regard to the medical examination conducted on the victim at Gohpur. He has not seize any garments of the victim as her garments were already washed by then.
- 18. PW 10 could not collect the medical examination of the victim though he approached

1819/19

Tezpur Medical College and Hospital. He was told that the victim had to be brought again as they had lost the report. The victim could not be taken again by him for medical examination as he had already been transferred.

- 19. PW 11 stated in his cross that he had collected the medical examination report of the victim from Tezpur and not from Gohpur. He collected the medical report from Tezpur on 21.06.2018. After completion of investigation, he submitted charge sheet against the accused, which he proved as Ext. 6.
- 20. When we scrutinize the evidence of PW 9, PW 10 and PW 11, we find that none of said witnesses had collected any report with regard to the examination of the victim, which was first conducted at Tezpur. PW 10 stated that he could not collect medical examination report of the victim from Tezpur Medical College and Hospital as he was told that they have lodged the same and therefore, they required the victim for re-examination. Evidence of PW 11, shows that he had collected the medical examination report of the victim but there is no evidence which shows that the victim was reexamined as was stated by PW 10. All these make the evidence that emanated with regard to the Ext. 2 becomes doubtful more so when, we find that PW 8 did not mention the date of the GD Entry No. 615, which according to PW 9 was the first GD Entry No. entered with regard to the incident. On the other hand, it was pointed out by the defence that the FIR Form noted the GD Entry no. as 625 dated 30.06.2017 and not as 615. Further, we find that the mother of the victim was not examined by the prosecution, who according to PW7 first detected the injury and thought it to be caused by leech.
- 21. All the discrepancies and inconsistencies in evidence that have emanated, as noticed above, go to show that the prosecution has failed to prove its case against the accused beyond reasonable doubt. As such, I acquit the accused from the offence charged against him on benefit of doubt and set him at liberty forthwith. As the accused has faced trial by remaining in custody, the Jail authority be directed to release the accused immediately, if he is not required in any other case. The seized articles be restored on the owner in due course. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 18th day of September, 2019.

(D. BORA)

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Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Ad A. De Roman and A. Sussaand a teams to call at

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Ranjit Ghatowar

PW2- Sri Bhagat Majhi

PW3- Smti Maina Majhi

PW4- Smti Astami Gowala

PW5- Smti Mumnu Tanti

PW6- Sri Sanjeeb Tanti

PW7- Victim

PW8- Dr. Gitumani Sonowal (M.O.)

PW9- Sri Subaleswar Deka (I.O.)

PW10- Sri Indreswar Gogoi (I.O.)

PW11- Md. Abdul Motalib Choudhury (I.O.)

Exhibits proved by the prosecution witnesses:

Exhibit-1: Ejahar

Exhibit-2: Injury Report

Exhibit-3: Seizure List

Exhibit-4: Seizure List

Exhibit-5: Sketch map

Exhibit-6: Charge sheet

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.