CAUSE TITLE POCSO Case No. 76/15

Informant: Sri Barna Torkod,

S/o- Sri Johan Torkod,

R/o- 319 No. Khowang Grant,

PS- Khowang, District- Dibrugarh.

Accused: Sri Sutu Kalandi,

S/o- Late Ashok Kalandi,

R/o- Boline, Khowang Tea Estate,

PS- Khowang, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Mr. U Rauth, learnd Legal Aid Counsel.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 76/15 G.R. Case No. 3102/15

> > State of Assam

-Vs-

Sri Sutu Kalandi

Charges: Under Sections 366-A of the IPC, read with Section 5(I)/6 of the

POCSO Act

Date of evidence on : 29-02-16, 25-05-16, 22-06-16 & 02-05-17.

Date of argument : 30-05-17. Date of Judgment : 13-06-17.

JUDGMENT

- 1) A brief account of the case is that on 24-10-15, at about 3:00 pm, the victim say-X went amiss. The family members embarked upon a frantic search, but could not find the victim X who was missing from her house. An ejahar regarding this incident was lodged by the victim's elder brother Sri Barna Torkod. A Khowang PS Case No. 44/15 under Section 365 of the Indian Penal Code (IPC in short) was registered and the investigating officer (IO in short) was endorsed with the investigation.
- 2) The IO embarked upon the investigation. He recovered the victim and forwarded her for medical examination and for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short). He went to the place of occurrence and prepared the Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, he submitted Charge-Sheet against the accused under Section 366-A IPC, read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO in short).
- 3) On appearance of the accused, copies were furnished. After hearing both the sides, a formal charge under Section 366-A of the IPC, read with Section 5(I)/6 of the POCSO Act was framed and read over and explained to the

- accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of six witnesses and the defence cross-examined the witnesses extensively to refute the charges.
- 5) On the circumstances arising against him, the tenor of the answers of the accused person to the questions under Section 313 (1) (b) of the CrPC depicts the plea of total denial.

SUBMISSIONS:

6) The learned Public Prosecutor Smti. Runumi Devi submitted that this case has been proved beyond reasonable doubt and adequate punishment ought to be inflicted upon the accused. The victim's evidence is reliable and in a case of this nature, the victim's evidence is sufficient to fasten the guilt on the accused. On the contrary, the learned defence counsel laid stress in his argument that this case is replete with contradictions and the accused has been made a scapegoat by the victim.

POINTS FOR DETERMINATION:

- 7) On the backdrop of the rival contentions proponed at the bar, the following points are apposite to be decided:
 - 1. Whether the accused abducted the victim X with intent that she may be compelled or knowing it to be likely that she will be compelled to marry another person against her will or seduced to illicit intercourse?
 - 2. Whether at the same time and place, the accused committed aggravated penetrative sexual assault on the victim X?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 8) In order to decide the case in its right perspective, it is necessary to delve into the evidence:
- 9) The victim X testified as PW-2 that she got acquainted with the accused person during Durga Puja festival at Khowang. She went to watch Durga Puja at Khowang in the year 2015 and she was introduced to the accused person by one of her friends named Madolin Kerkata. When the accused asked her name and address, she refused to disclose her name and address. On the day of the incident, while she was alone in the house, the accused along with one of his friends came to her house and called her in the pretext of having

something to inform her. At that time, she was alone at home and she also learnt that her friend Madolin Kerkata gave her name and address to the accused. The accused offered her sweet meat and after having the sweet, she felt giddy. When she came to her senses, she asked the accused where she was and the accused informed her that she was in his elder brother-inlaw's house. The elder brother-in-law of the accused refused to allow the victim to stay in their house. Thereafter, the accused took her in an auto to Bamunbari towards his elder sister's house. During her stay in the accused person's elder sister's house, the accused forcefully had sexual intercourse with her. They stayed in the accused person's elder sister's house at Bamunbari for eleven days. The accused person's elder sister insisted to send her back to her house, but the accused did not allow her to return to her house. While she was staying in the accused person's elder sister's house, the accused kept her confined inside the house and did not allow her to go out of the house. Thereafter, the accused took her to Khukan Nagar at Moran to his elder sister's house and the police recovered her from Khukan Nagar. The police brought her to the police station where she met her brother and her parents. The police recorded her statement. The police forwarded her to the hospital for medical examination, but she did not allow the doctor to examine her as she was having her menstrual periods. She also came to the Court and the Magistrate recorded her statement. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(3) are her signatures. She answered to the Court that her date of birth was 07-12-99. Her cross-examination will be discussed at the proper stage.

10) The evidence of the victim is not found reliable. It is not fathomable that after eating a sweet meat provided by the accused, she will be knocked unconscious to such an extent that she will find herself in another place unknown to her. The victim also did not state how the accused after offering her sweet which made her unconscious took her to his elder brother-in-law's house at Khowang. There is no explanation by the victim how she went from Khowang to Bamunbari. If the accused had forcefully taken her to Khowang, then why did she go to Bamunbari with the accused person and stayed there in his elder sister's house for eleven days. It is also not fathomable that the accused person will be able to keep her confined in his sister's house who was unwilling to keep the victim X in her house and insisted that the victim

should return to her house. It is also not believable that the accused person will forcefully commit rape on the victim X in his elder sister's house which is inhabited by his sister, brother-in-law and other family members. If the victim was so reluctant, then why she continued with her sojourn with the accused person and went to Khukan Nagar from Khowang till her recovery by the police. The victim's evidence does not inspire confidence. The date of birth of the victim was 07-12-99 which implies that she was above 16 years on 24-10-15. No documents supporting her age were exhibited. Moreover, the doctor could not give any opinion, because she refused medical examination. On the contrary, the victim stated that her age was 16 years when she was produced before the Magistrate. It is apt to mention at this stage that in her statement before the Magistrate under Section 164 CrPC, the victim stated that on 24-10-15, at about 3:00 pm, the accused came to her house when she was alone and asked her to accompany him to his sister's house at Khowang, but she refused. When she refused, the accused forcefully took her with him and while on the way to Khowang, the accused informed her that he eloped with her. At that time, she refused to go with him and insisted to return home, but the accused and his friends forcefully took her to Bamunbari to his elder sister's house. They stayed there for ten days. This statement is contrary to what the victim testified in the Court, because according to her testimony, she became unconscious on consumption of a sweet offered by the accused and she came to her senses in the accused persons elder brother-in-law's house in Khowang. In her statement under Section 164 CrPC, the victim stated that she stayed in Khowang for ten days. This was not stated by the victim in her evidence. The victim's testimony belies her evidence. Conduct of the victim clearly depicts that she went with the accused on her own volition. She was rather enamoured of the accused.

11) The evidence of the victim is supported by her brother's evidence. Sri Barna Torkod testified as PW-1 that he came to know the accused person after the incident. The victim X is his younger sister. About three months back, on the day of the incident, his sister was alone at home and he and his parents were out on work. When he reached home at about 3:00 pm, he found his sister missing from the house. After a frantic search for about 6/7 days at every possible places, they could not find her and then he lodged the ejahar. At the time of the incident, his sister was around 16/17 years. After three or four

days, the police informed him that they recovered the victim and asked him to go to the police station. He and his parents went to the police station and met his sister along with the accused person. He learnt that the accused person's name was Sri Sutu Kalandi. On the next day, the police took his sister for medical examination. The police also forwarded his sister to the Magistrate for recording her statement. His parents took custody of his sister. His sister informed him that the accused person took her to some places including his elder brother-in-law's house, but his elder brother-in-law did not allow the accused to keep the victim in their house and informed the police.

- 12) Thus, it is clear from the complainant's evidence that the victim was not allowed to stay in the accused person's elder brother-in-law's house. Even though she was taken out of his house, she continued accompanying the accused person to different places until she was recovered by the police. The victim's conduct clearly depicts that she went with the accused on her own volition. Moreover, the complainant has clearly stated that the victim was 16/17 years at the time of alleged incident. Thus, according to Criminal Jurisprudence, two years on the higher side of the victim's age can be taken into consideration.
- 13) At this juncture, it is apt to advert to the cross-examination of the IO. SI Biraj Kumar Dutta testified as PW-6 that on 01-11-15, he was endorsed to investigate the Khowang PS Case No. 44/15 under Section 366 of the IPC launched on the basis of the ejahar Ext. 2 where Ext. 2(2) is the signature of SI Raju Gogoi which is familiar to him. In his cross-examination, he testified that the victim did not state before him that on the day of the incident, the accused called her in the pretext to inform her something and offered her a sweet meat after having which she felt dizziness.
- 14) Thus, it is clear that the core incident was not mentioned by the victim to the police. This is a major contradiction which belies the victim's evidence.
- 15) Reverting back to the IO's examination-in-chief, the IO PW-6 further testified that he prepared the Sketch-Map of the place of occurrence. Ext. 3 is the Sketch-Map and Ext. 3(1) is his signature. He recorded the statement of complaint and the witnesses in the place of occurrence. On 03-11-15, he found the victim in a rented house at Moran Natun Nagar along with the accused person in the rented house. This evidence of the IO casts a shadow of doubt again over the veracity of the victim's evidence. She stated as PW-2

- that she stayed in the accused person's elder sister's house at Moran Natun Nagar, but the IO stated that the victim was found with the accused person in a rented house at Moran Natun Nagar. After completion of investigation, the IO submitted the Charge-Sheet Ext. 4 where Ext. 4(1) is his signature.
- 16) The IO's cross-examination reflects severe contradictions in the victim's testimony. The IO affirmed the omission of the victim to state before him that on the day of the occurrence, she was alone at home and the accused came to her house along with one of his companions, but the victim stated before the IO that the accused came alone when she was alone at home. The victim also omitted to state before him that the accused called her in the pretext of having to inform her something and offered her sweet meat, after consumption of which, she felt giddy and then the accused took her to his elder sister's house at Bamunbari. The IO affirmed that the victim stated that the accused took her to Bamunbari.
- 17) Thus, this case is replete with contradictions. The core of the case has been omitted by the victim in her statement under Section 161 CrPC. She omitted to mention before the IO and the Magistrate that the sweet meat rendered her unconscious. This is the main substance of the story narrated by the victim in her testimony before the Court. The contradictions to the extent that the victim was made unconscious by the sweet or she was forcefully taken away by the accused from her house when she was alone and conscious, clearly depicts that there is embellishment and this casts a shadow of doubt over the veracity of the evidence of the victim. The benefit of doubt goes to the accused. Moreover, she stayed in the accused person's brother-in-law's house and sister-in-law's house during the entire period of her disappearance. There is no evidence regarding the demeanour of the accused person's brother-in-law or sister-in-law when the victim encountered them in their respective houses.
- 18) I would like to refer with profit the decision of the Hon'ble The Supreme Court in *ND Dhyagude vs. State of Maharashtra* that:

"The story narrated by him in his evidence before the Court differs substantially from that set out in his statement before the police and having regard to the large number of contradictions in his evidence- contradictions not on mere matters of detail, but on vital points- we do not think it would be safe to rely on his evidence."

- 19) Reverting back to this case, it is held that this case is fraught with discrepancies and the story narrated by the victim before the Court differs substantially from that stated in her statement before the police and the learned Magistrate. The evidence of PW-5 is based on the basis of the victim X and the complainant.
- 20) Smti. Dalila Torkod is the victim's mother and she testified as PW-8 that on the day of the incident, at about 4:00 pm, when she returned home, she found her daughter X missing. She along with her family members set out on a frantic search, but could not trace out the victim. She informed the VDP members. Finally, her son Sri Barna Torkod lodged an ejahar with the police. After fifteen days, she received information from the Khowang Police Station that her daughter was recovered by the Khowang Police. She along with her family members went to the police station and found her daughter and the accused person. When she asked her daughter about the incident, her daughter informed her that the accused person offered her a sweet and thereafter, she was taken to several places and the accused person kept her with him. In her cross-examination, she testified that she did not know from where her daughter was recovered by the Khowang Police.
- 21) It has already been held that the victim's evidence does not inspire confidence. The PW-5's evidence is based on the victim's narrative. It is clear that when she was confronted by her mother, the victim improved her version to extricate herself from the situation. The facts are eloquent that the victim had been staying with the accused for more than fifteen days. When the victim's testimony is not acceptable as reliable evidence, her mother's evidence which is based on her narrative cannot be accepted. The evidence of other witnesses does not implicate the accused as complicit.
- 22) Sri Havil Bhakta testified as PW-3 that the accused person is not known to him. The incident took place about six months back. The victim is his sister-in-law. On the day of the incident, he was staying in his in-law's residence and he was informed that the victim went amiss. After a frantic search, when the victim could not be found, the police was informed and much later, the victim was recovered by the police.
- 23) Similarly, the evidence of PW-4 also does not implicate the accused person. Sri Susen Torkod testified as PW-4 that the accused person is not known to him and the victim is his younger sister. About 4/5 months back, about 3:00

pm, they discovered that the victim was missing. They searched their neighbourhood and lodged an ejahar. Two villagers from Khowang came and

informed them that the victim was in the accused person's brother-in-law's house. Then they informed the police who recovered the victim.

24) Recapitulating the entire evidence, it is thereby held that this case is fraught

with discrepancies and the benefit of doubt goes to the accused. Prosecution

failed to prove beyond a reasonable doubt that the accused kidnapped the

victim with intent to seduce her to illicit intercourse. The prosecution also

failed to prove beyond reasonable doubt that the accused committed

aggravated penetrative sexual assault on the victim.

25) Thereby, the accused Sri Sutu Kalandi is acquitted from the charges under

Sections 366-A of the IPC, read with Section 5(I)/6 of the POCSO Act and set

at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 13th day of

June, 2017.

Sessions Judge, Dibrugarh

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

> Sessions Judge, Dibrugarh

List of witnesses:

- 1. PW-1 Sri Barna Torkod;
- 2. PW-2 The victim;
- 3. PW-3 Sri Havil Bhakta;
- 4. PW-4 Sri Susen Torkod;
- 5. PW-5 Smti. Dalila Torkod; and
- 6. PW-6 SI 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 Sketch-Map; and
- 4. Ext. 4 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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