IN THE COURT OF THE SPECIAL JUDGE

CHIRANG, KAJALGAON.



## Special(P) Case No. 3(RKT)/2017 U/S 376(2)(i) IPC R/W Section 4/12 of POCSO Act.

State of Assam Vs. Sri Bankim Barman @ Peku @ Feku Sri Bapan Ray Sri Biswajit Ray

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.....Accused Persons.

PRESENT:

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

#### **ADVOCATES APPEARED:**

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Md. N.I. Siddique, Ld. Advocate

Date of Evidence

: 12.09.17, 15.02.18, 25.04.18,

28.05.18, 07.07.18, 04.10.18

Date of Argument : 29.11.2018

Date of Judgment : 29.11.2018

# <u>JUDGMENT</u>

The prosecution case as revealed during trial in brief is that on 16.11.2016, the informant Abhinash Barman lodged an FIR before Bengtol Police Outpost alleging that his elder niece Miss 'X' (name is withheld) stayed as maidservant in the house of accused Bankim Barman @ Peku Barman wherein she was raped for several times by above named three accused persons since the month of July till the month of October. It was also alleged that after committing rape upon the victim, they compelled her to take

contraceptive pills and they also tortured her badly. Later on, the victim was sent back to her home in the month of October by the accused persons threatening her not to disclose the matter to anyone. Thereafter, the younger niece of the informant Miss 'Y' (name is withheld) was sent to do the household works in place of Miss 'X' (name is withheld) but she was also sexually assaulted by the accused persons.

- 2. After receiving the FIR, the I/C, Bengtol O.P. made Bengtol O.P. GD Entry No. 380 dtd. 16.11.16 forwarded the FIR to the O/C of Runikhata P.S. for registering a case. Accordingly, the O/C of Runikhata P.S. registered a case being numbered as Runikhata P.S. Case No.60/16 U/S 376(2)(i) IPC R/W Section 6/8 of POCSO Act R/W Section 18(1)/18(1)(a) Child Labour Prohibition Act-1986 and entrusted S.I. Lakshman Kr. Das for investigation of the case. Accordingly, the Investigating Officer arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victims for medical examination, got recorded their statements u/s 164 Cr.P.C, collected the medical report and after completion of investigation, he submitted chargesheet against the accused persons, namely, Bankim Barman @ Peku @ Feku, Bapan Ray and Biswajit Ray U/S 376(2)(i) of IPC R/W Section 4/6/8 of POCSO Act before this court. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused persons were produced from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, my learned predecessor framed formal charge U/S 376(2)(i) IPC R/W Section 4/12 of POCSO Act against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person were released on bail during trial.
- In support of the case prosecution side examined as many as
   (thirteen) witnesses including the M.O. and I.O.

Following witnesses were examined:-

- (1) Victim Miss 'X' (name is withheld) as PW 1
- (2) Informant Sri Abinash Barman as PW 2

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- (3) Victim Miss 'Y' (name is withheld) as PW 3
- (4) Miss Sumi Barman as PW 4
- (5) Miss Dipika Mandal as PW 5
- (6) Mrs. Mani Mandal as PW 6
- (7) Smt. Basanti Barman as PW 7
- (8) Smt. Sobha Adhikary as PW 8
- (9) Sri Uday Sarkar as PW 9
- (10) Smt. Kalpana Sarkar as PW 10
- (11) Sri Dilip Sharma as PW 11
- (12) S.I. Lakshman Kumar Das (I.O.) as PW 12
- (13) Dr. Kukumoni Basumatary (M.O.) as PW 13
- 4. Statement of the victim Miss 'X' (name is withheld) recorded U/S 164 Cr.P.C. was exhibited as Ext.1. Statement of the victim Miss 'Y' (name is withheld) recorded U/S 164 Cr.P.C. was exhibited as Ext.2. Statement of PW 4 Miss Sumi Barman recorded U/S 164 Cr.P.C. was exhibited as Ext.3. Statement of PW 5 Miss Dipika Mandal recorded U/S 164 Cr.P.C. was exhibited as Ext.4. Statement of PW 6 Mrs. Mani Mandal recorded U/S 164 Cr.P.C. was exhibited as Ext.5. Statement of PW 8 Smt. Sobha Adhikary recorded U/S 164 Cr.P.C. was exhibited as Ext.5. Statement of PW 8 Smt. Sobha Adhikary recorded U/S 164 Cr.P.C. was exhibited as Ext.6. Sketch map was exhibited as Ext.7, FIR was exhibited as Ext.8, charge-sheet was exhibited as Ext.9, Medical Reports was exhibited as Ext.10 & Ext.12 and Radiological Reports were exhibited as Ext.11 & Ext.13.

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- 5. Defence plea is of total denial. Statements of accused persons were recorded u/s 313 Cr.P.C. Defence adduced no evidence.
- 6. 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.

# 7. POINTS FOR CONSIDERATION:-

For the offence U/S 376(2)(i) of IPC

1. Whether since July, 2016 till October, 2016 at different point of

time, at village Durgapur under Runikhata P.S., the accused persons committed rape on Miss 'X' (name is withheld), a woman under age of 16 years?

## For the offence U/S 4 of POCSO Act

2. Whether on said dates, time and place, the accused persons committed penetrative sexual assault upon Miss 'X' (name is withheld), a minor girl under the age of 18 years?

# For the offence U/S 12 of POCSO Act

3. Whether on said dates, time and place, the accused persons committed sexual harassment on the child Miss 'Y' (name is withheld)?

# **DISCUSSION, DECISION AND REASONS THEREFOR:**

- 8. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned both points simultaneously for the sake of convenience.
- 9. PW 1 is the victim. She deposed that her parents have expired in her childhood. After the death of her parents, she used to stay in the house of her maternal aunt Anita Barman. Her sister Miss 'Y' (name is withheld) however, used to stay at the house of her paternal aunt Basanti Ray. Occurrence took place before about 9/10 months from the date of her deposition and before 5 months from the date of occurrence, she stayed at the house of accused Peku Barman to do his household works and she stayed there for about 2 months. During her stay in the house of Peku Barman, he did not commit any immoral act with her but he was falsely implicated in this case.

As PW 1 did not support the prosecution case, hence, learned P.P. prayed for declaring her as hostile and same was allowed. During her cross-examination by prosecution, she stated that as instructed by village people, she stated before the police and Magistrate accusing the accused

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persons for commission of sexual intercourse upon her. During her cross by defence, she clearly stated that the accused persons did not commit any immoral act with her. She further stated that as the villagers of her village threatened her and as tutored by P.W.2 her uncle, she gave her statement differently before the police and the Magistrate.

10. PW 2 is the informant, who is the uncle of the victim. He deposed that occurrence took place prior to Durga Puja in the year 2016. At that time, victim Miss 'X' (name is withheld), who was his niece was residing in the house of Bankim. She reported him that during her stay in the accused Bankim, the later committed rape upon her. The accused Bankim committed rape upon the victim for a period of about 15 days. Accused Biswajit took the victim from the house of the accused Bankim on his motorcycle. The accused Biswajit wanted to marry victim. He touched her breast. Accused Bapan also touched her breast. Accused Biswajit, Bapan and Bankim also committed sexual assault upon victim Miss 'Y' (name is withheld). They touched her breast as reported by her. He could not say on which date they committed said act. The present age of victim Miss 'X' (name is withheld), is about 18 years and the present age of other victim Miss 'Y' (name is withheld), is about 16 years. In this regard, a village meeting was held. Dispute was not solved during the time of meeting for which he lodged FIR before the Bengtol Police Outpost under Runikhata P.S. which was written by one Sanjoy Kr. Shah. He knew the writer of the FIR.

11. PW 3 is another victim. She deposed that occurrence took place during Durga Puja in the year 2016. At that time, she was residing in the house of Anita Barman. The accused persons did not commit any bad act with her. As accused Bapan made quarrel with her uncle, so, her uncle filed this case. Due to threatening, she did not state before the Magistrate as deposed by her before this Court. According to PW 3, no any incident occurred as

alleged.

12. PW 4 Sumi Barman deposed that in the month of November, 2016 she heard that accused Peku and Bapan committed rape upon the victim and she asked about the incident, then victim Miss 'X' (name is withheld) told

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PW 4 that when she was working in the house of Peku @ Bankim, he committed sexual intercourse with her and accused Biswajit touched the body of victim Miss 'Y' (name is withheld). She further told PW 4 that she was also raped by Bapan in his home when she was working thereon. They convened a meeting in this regard but accused did not appear. PW 5 and PW 6 also stated same facts as stated by PW 4.

- 13. PW 7 Basanti Barman is aunt of the victims. She deposed that occurrence took place during the time of last Durga Puja. Victim Miss 'X' (name is withheld) told her that when she was working in the house of accused Bankim Barman, he committed sexual intercourse with her. She reported her (PW 7) that she was sexually harassed by the accused two three days ago from the date of her deposition. She further told PW 7 that due to sexual intercourse committed by accused Bankim Barman, she became pregnant. At that time, age of the victim Miss 'X' (name is withheld) was about 18 years. After the incident accused drove the victim and kept her sister Miss 'Y' (name is withheld). Miss 'Y' (name is withheld) stayed in the house of Bankim Barman for a period of 2/3 months. After 5/6 days victim Miss 'Y' (name is withheld) told PW 7 that accused Bapan and Biswajit hold her breast.
- 14. PW 8 deposed that she heard about the incident in a meeting when both victim girls narrated the incident before them. Miss 'X' (name is withheld) told before them that accused persons, namely Bapan, Bankim @ Peku and Biswajit had commit sexual intercourse with her. Miss 'Y' (name is withheld) also told them that accused Bankim @ Peku and Bapan touched her body.
- 15. PW 9 only heard that someone committed rape upon a girl but he did not who committed rape upon whom. Both the victim girls were residing for a period of three months in the house of the accused Bankim. PW 10 also only heard that accused Bankim committed rape upon a girl. PW 11 deposed that one of the victim girls told them that accused persons committed rape upon her but he has no personnel knowledge about the alleged rape.

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- 16. PW 12 is the I.O., who deposed that after getting the FIR, he made Bengtol Police Out Post GD Entry No. 380 dtd. 16.11.16 and forwarded the FIR to O.C., Runikhata P.S. for registration. In the meantime, he took the charge of investigation. He interrogated the informant along with victim at police out post. After getting the FIR, the O.C., Runikhata registered a case being numbered as Runikhata P.S. Case No. 60/16. He visited the place of occurrence and drew sketch map. He sent the victims and other witnesses to the court for recording her statement U/S 164 Cr.P.C. He also sent the victims for medical examination. He collected the medical examination report. After completion of investigation, he submitted charge-sheet against the accused persons U/S 376(2)(i) IPC R/W Section 4/6/8 of POCSO Act.
- 17. PW 13 is the Medical Officer, who examined the victim girls. She deposed that on 19.11.16, she was working as Medical & Health Officer at RNB Civil Hospital, Kokrajhar. On that day, she examined the victim Miss 'Y' (name is withheld) in connection with Runikhata P.S. Case No. 60/16 U/S 376(2)(i) IPC R/W Section 6/8 of POCSO Act escorted and identified by WPC/103 Jonali Barman. On examination, she found the following:-

There was history of molestation by multiple persons on different occasions.

Secondary sexual characters were not well developed. Hymen was intact. Patient and guardian refused to vaginal swab to be taken.

According to radiological examination — right hand X-ray ulna radial physic present, age above 13 years. Right elbow joint — external epicondyle not completely fused, below 16 years. Pelvic bone — iliac crest, anterior inferior iliac spine, pubic symphysis, ischeal tuberocity are not fused. Hip joint — lesser trochanter appeared but not fused. Hence, age is 14 years. Age estimation is 14 years but below 16 years.

According Medical Officer sexual exposure unlikely.

On the same date, she examined victim Miss 'X' (name is withheld) in connection with Runikhata P.S. Case No. 60/16 U/S 376(2)(i) IPC

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R/W Section 6/8 of POCSO Act escorted and identified by WPC/103 Janali Barman. On examination, she found the following:-

There was history of molestation by her uncle where she was working.

Secondary sexual characters were not well developed. Hymen was absent. Vaginal swab was sent but no spermatozoa found.

According to radiological examination — right hand X-ray ulna radial physics present, age above 13 years. Right elbow joint — external epicondyle fuse on process, age is 16 years. Olecrenon fusion on process, age 16 years. Head of radius fusion, age 16 years. Pelvic bone — iliac crest, anterior inferior iliac spine, pubic symphysis, ischeal tuberocity all appeared but not fused, below 20 years. Hip joint — Head not completely fused, below 18 years. Greater trochanter not completely fused, below 18 years. Lesser trochanter same as greater trochanter. Impression - Age estimation is 15 years completed but below 18 years.

According Medical Officer sexual contact might or might not have taken place.

During cross-examination, PW 13 stated that she has not seen the X-ray plate regarding radiological report of the victims.

that in this case material witnesses, particularly two victim girls did not support the prosecution story. They also stated that due to old dispute between their uncle and accused, this case was lodged falsely. Victim further deposed that as she was tutored by PW 2 for which she had given different statement before the Magistrate U/S 164 CrPC. According to learned defence counsel, there is no any other independent witness who saw the incident. Moreover, delay in lodging the FIR was not explained. It is found from the record that occurrence took place during the month of July to October 2016 but FIR was lodged on 16.11.2016. Almost one and half months delay was not explained properly by the informant in his FIR as well in his deposition.

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Independent witnesses heard about the incident. If anything was happened that should be known by the other witnesses who were residing near the house of the accused. According to FIR, incident took place in the house of accused Bankim for a long period but no any other residents knew about the incident which created doubt about the entire prosecution story. Considering all anomalies, learned defence counsel prayed for acquittal of the accused.

19. Learned P.P. also did not press for conviction of the accused as material witnesses, both victim girls denied the allegation leveled against the accused in FIR. According to them, FIR narrated story was nothing but concocted story and they stated before the Magistrate during the time of investigation as tutored by PW 2. It is settled provision of law that if victim becomes hostile, then supportive evidence must be necessary but in the present case at hand, no such reliable cogent evidence is found from the neutral independent witnesses. As material witnesses denied the allegation and failed to support the story, so, I have found no any cogent evidence in this regard from other witnesses. All other witnesses heard about the incident. According to them, they were reported by the victims but victims, during their deposition, clearly stated that nothing was happened as alleged in the FIR. So, there is no reliable evidence on record to book the accused persons for the offences mentioned above. Therefore, all points mentioned above are remained as not proved. Accused persons are not found guilty.

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## <u>O R D E R</u>

20. Prosecution failed to prove the case U/S 376(2)(i) IPC R/W Section 4/12 of POCSO Act against accused persons, namely Bankim Barman @ Peku @ Feku, Bapan Ray and Biswajit Ray. Accused persons are acquitted and set at liberty. They are directed to furnish bail bond of Rs. 10,000/- each with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, they are allowed to remain in previous bail.

- 21. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.
- 22. Given under my sign and seal of this Court on this the 29<sup>th</sup> day of November, 2018, at Kajalgaon, Chirang.

idyogyad; Makawa 29/11/18 (D.J. Mahanta)

Special Judge,

Dictated and corrected by me,

(D.J. Mahanta)
Special Judge,

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#### **APPENDIX**

#### **Prosecution witness:**

PW 1 - Victim Miss 'X' (name is withheld)

PW 2 - Informant Sri Abinash Barman

PW 3 - Victim Miss 'Y' (name is withheld)

PW 4 - Miss Sumi Barman

PW 5 - Miss Dipika Mandal

PW 6 - Mrs. Mani Mandal

PW 7 - Smt. Basanti Barman

PW 8 - Smt. Sobha Adhikary

PW 9 - Sri Uday Sarkar

PW 10 - Smt. Kalpana Sarkar

PW 11 - Sri Dilip Sharma

PW 12 - S.I. Lakshman Kumar Das (I.O.)

PW 13 - Dr. Kukumoni Basumatary (M.O.)

#### **Exhibit (Prosecution):**

Ext-1 Statement of victim Miss 'X' (name is withheld) recorded U/S 164 Cr.P.C

Ext-2 Statement of victim Miss 'Y' (name is withheld) recorded U/S 164 Cr.P.C.

Ext-3 Statement of PW 4 Miss Sumi Barman recorded U/S 164 Cr.P.C.

Ext-4 Statement of PW 5 Miss Dipika Mandal recorded U/S 164 Cr.P.C.

Ext-5 Statement of PW 6 Mrs. Mani Mandal recorded U/S 164 Cr.P.C.

Ext-6 Statement of PW 8 Smt. Sobha Adhikary recorded U/S 164 Cr.P.C.

Ext-7 Sketch map

Ext-8 FIR

Ext-9 Charge-sheet

Ext-10 Medical Report

Ext-11 Radiological report

Ext-12 Medical Reports

Ext-13 Radiological report

#### Material Exhibit (Prosecution):

Nil.

#### **Defence Witness:**

Nil.

### **Defence Exhibit:**

Nil.

(D.J. Mahanta)
Special Judge,
Chirang