

IN THE COURT OF THE SPECIAL JUDGE :::::::::

CHIRANG, KAJALGAON.

Special (P) Case No. 44(S)/2018

U/S 4 of POCSO Act.

State of Assam *Vs.*Sri Ranjit Soren

.....Accused

PRESENT:

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

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri P. Baidya, Ld. Advocate

Date of evidence

: 27.07.18, 30.07.18, 01.08.18

Date of Argument

: 14.08.2018

Date of Judgment

: 14.08.2018

<u>J U D G M E N T</u>

- 1. The prosecution case in brief is that on 24.10.2017, the informant Smt. Baha Murmu lodged an FIR before Sidli P.S. alleging that on 22.10.2017 at about 3.00 p.m., while Miss 'X' (name is withheld), the 16 years old daughter of the informant was alone at her home, accused Ranjit Soren from same village came there and took the victim to the backside of her home and gagging her with a cloth, forcefully committed sexual intercourse rape upon her. As she was raising hue and cry, some neighbours came to the spot and caught the accused person. Regarding the matter, a village meeting was held in the village and in that meeting, the mother of the accused assaulted the victim, caused serious injury on her person.
- 2. The matter was informed to the O/C, Sidli Police Station who accordingly registered a case being numbered as Sidli P.S. Case No. 44/2017

U/S 376(2)(i)/325 IPC read with Section 4 of POCSO Act and A.S.I. M. Hussain was entrusted for taking pre-step and the O/C himself was entrusted as I.O. to complete the investigation of the case. Accordingly, the I.O. arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C and after completion of investigation, submitted charge-sheet against the accused person, namely, Ranjit Soren U/S 376(2)(i)/325 IPC read with Section 4 of POCSO Act.

- 3. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused person was produced before the court from jail. On perusal of entire materials on record and hearing both sides on point of consideration of charge and after having found a prima facie case, formal charge was framed U/S 4 of POCSO Act against accused Ranjit Soren. Charge was read over and explained to the accused person to which he denied to plead guilty.
- 4. In support of the case prosecution side examined as many as 8 (eight) witnesses including the I.O.

Following witnesses are examined:-

- (1) Sri Suban Hembram as PW 1
- (2) Sri Poltan Murmu as PW 2
- (3) Victim Miss X (name is withheld)as PW 3
- (4) Smt. Baha Murmu as PW 4
- (5) Sri Bagal Hembram as PW 5
- (6) Sri Meghlal Hasda as PW 6
- (7) Sri Suniram Hembram as PW 7
- (8) SI Nikhil Ch. Ray (I.O.) as PW 8
- 5. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.1. Seizure list was exhibited as Ext.2. FIR was exhibited as Ext.3, medical report was exhibited as Ext. 4 and charge-sheet was exhibited as Ext.5. Birth Certificate of the victim was exhibited as Material Ext.1.

- Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.

8. Now point for consideration:-

For the offence U/S 4 of POCSO Act

(i) Whether on 22.10.2017, at about 3.00 P.M., at village Nimagaon under Sidli P.S. in the house of the informant, the accused committed penetrative sexual assault on Miss 'X' (name is withheld), minor daughter of the informant?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding the point mentioned above.
- 10. I have already mentioned that in support of the case, prosecution side examined all total 8 witnesses including the I.O. M.O. was not examined.
- 11. In this case, one Baha Murmu lodged FIR stating that accused committed sexual intercourse with her daughter. Informant was examined as PW 4. She deposed that occurrence took place in the year 2017 at about 2 PM. She further deposed that at present, age of the victim is 19 years. On the date of occurrence, she was absent in her home. When she reached her home, then her younger daughter reported her that victim was taken by some person. She immediately went to the house of the 'Gaonburha' (village headman). Her daughter and accused were caught by villagers, for which matter was placed before the 'Gaonburha'. When she asked her daughter, she informed that accused had committed rape upon her. 'Gaonburha' told them that matter would be settled but it was not settled, for which she lodged the FIR after two days from the date of incidence. Police came to the place of occurrence and seized birth certificate of the victim which was exhibited as Material Ext. 1. During her cross-examination, she deposed that actually FIR was written by an Advocate's clerk. She only signed upon it. It is found that

though she knew how to sign, but in FIR, she gave her thumb impression. During the cross-examination, learned defence counsel pointed out that at the time of occurrence, age of the victim was above 18 years but she denied. Another point revealed from her cross-examination is that when she asked her daughter in the house of Gaonburha', then her daughter did not state anything to her. She(victim) did not state that accused had committed rape upon her. Another fact revealed from her cross-examination is that the Material Ext. 1 was collected from the office by her husband. So, date of birth of the victim was supplied to the office by her husband. Her husband was not examined. According to Material Ext.1, the date of birth of the victim is 25.10.1999. Occurrence took place on 22.10.2017. So, on the date of occurrence, according to Material Ext.1, age of the victim was 17 years, 11 months and 27 days, almost 18 years.

Victim was examined as PW 3. She deposed that at the time of occurrence, she was reading in Class IX at Raja Ajit Narayan High School. On the date of occurrence i.e. on 22.10.2017, at about 3 PM, she was alone in her home. Her mother went to the market. Accused came to their home and forcefully took her to the bamboo garden. Accused told her to keep mum. He gagged her with a cloth. After that he put off her dress, then she made hue and cry. Accused committed sexual intercourse with her within the bamboo grove. Then two villagers witnessed the occurrence. They caught them and brought to the house of the village headman. After that mother of the accused came to the house of the village headman and beat her. Her mother also came to the house of the village headman. According to PW 3, she reported the incident to her mother. Then her mother lodged the FIR. During her crossexamination, it is revealed that she failed in Class IX. Both of them were reading in same class since childhood. It is also revealed from her evidence that she did not state anything before the villagers in the house of village headman. Another point revealed during cross-examination of PW 3 is that she fled away with her cousin brother one year prior to this incident. So, it is found that victim did not state the entire facts before the village headman when she was taken there along with the accused. It is also revealed that she failed in lower classes.

12.

- 13. PW 1 is Suban Hembram, who deposed that on the date of occurrence, he went to nearby jungle to defecate. Then one Shankar Hembram informed him that accused along with victim were found in the jungle. Then he proceeded to the place of occurrence and found that both accused and victim were making conversation. He immediately reported the matter to the village headman. Victim did not state anything to them. This witness further deposed that during the time of investigation, father of the victim threatened them for which he had stated before the Investigating Officer that he had seen the occurrence. According to PW 1, at the time of occurrence, age of the victim was about 19 years.
- 14. PW 2 Sri Poltan Murmu deposed that occurrence took place at about 2 PM. On the date of occurrence he was sleeping in his home. PW 1 called him to the place of occurrence. He reached the spot and found that the accused and victim were standing in the jungle. This witness also stated that victim did not state anything to them. According to PW 2, at the time of occurrence, age of the victim was 18/19 years. During his cross-examination, this witness stated that both accused and victim were reading in same class prior to the incident.
- 15. PW 5 is the village headman of Nimagaon, Batabari village. He deposed that on the date of occurrence, victim was reading in Class IX and she failed three times in Class IX. On the date of occurrence, he was in his home. One Soban Hembram brought the accused along with victim to his home. They reported him that both the accused and victim were found in the jungle when they were gossiping. He asked both the accused and the victim that what was doing by them within the jungle. They did not give any reply. After that both parents of the accused and mother of victim came to his home. He handed over the accused and victim to their respective guardians. This witness clearly stated that when he asked the victim and accused about the actual fact, then they became silent.
- 16. PW 6 heard about the incident. He had no direct knowledge. PW 7 deposed that he heard on next day.

- PW 8 is the Investigating Officer, who deposed that on 17. 04.01.2011, he was serving as I/C, Garubhasa out Post. On that day, O/C, Sidli P.S. entrusted him for investigation in connection with Sidli P.S. Case No. 44/17. After taking the charge of investigation, he found that already earlier I/O started investigation by recording the statements of the witnesses and collecting medical examination report. Earlier I.O. also drew sketch map. This witness only submitted charge-sheet U/S 376(2)(i) of IPC R/W Section 4 of POCSO Act. He also arrested the accused and examined two witnesses. The PW 8 also exhibited the medical report and charge-sheet as Ext.4 & 5 respectively. According to Ext.4, age of the victim was mentioned as 18 years. During the examination-in-chief, PW 3, the victim stated that when accused put off her dress, she made hue and cry but learned defence counsel during cross-examination pointed out that she did not state before the I.O. that she made hue and cry at the time when accused put off her dress. This fact was confirmed by PW 8. According to learned defence counsel, delay was not explained in FIR or before the I.O. The I.O. after perusing the case diary, confirmed this fact.
- that victim knew the accused from her childhood. It is also revealed from the evidence on record that both accused and victim were reading in same school and in same class. They knew each other very well. It is also found from the evidence of the independent witnesses that at first, victim did not state anything to anybody else. Her mother also stated during cross-examination that victim did not state to her in the house of village headman that accused had committed rape upon her. The victim stated two facts. At first, she stated that accused told her to keep mum. On the other hand, she stated that accused gagged her with a cloth. Age of the victim is found to be about 18 years considering the Material Ext.1 and the Ext.4. So, from the documentary, oral and medical evidence, it is found that age of the victim was about 18 years. It is also found that she did not make hue and cry at the time of occurrence because PW 1 and PW 2 did not state that victim made hue and cry. Therefore, the statement of victim that she made hue and cry is not believable. It is also revealed from the cross-examination of victim that she knew the accused and accused called her and she went out along with him.

After going through the entire evidence on record, I have found

Special Judge. Chirang, Kajalgaon 18.

When PW 1 and PW 2 noticed the victim and accused, both of them were standing and were making conversation. Initially victim did not state that accused had committed sexual intercourse with her. After filing the case, victim stated that that accused had committed sexual intercourse with her forcefully. No any reliable evidence is found in this regard. Village headman also stated that when he asked about the actual incident, then victim did not state anything. She was silent. So, entire story has come under the shadow of doubt. Victim is not found as wholly reliable witness. She further deposed that one year prior to this incidence she fled away with her cousin brother which reflects the nature of the victim. Independent witness failed to support the prosecution version of the case. It is revealed from the evidence on record that age of victim was about 18 years. No cogent evidence is found to believe the prosecution story as true story. So, allegation made against accused is found to be baseless. Victim and her mother did not state specifically that accused had committed sexual intercourse with the victim. So, prosecution failed to bring home the charge U/S 4 of POCSO Act against accused. The point mentioned above is remained as not proved. Accused is not found guilty.

ORDER

19. Prosecution failed to prove the case U/S 4 of POCSO Act against the accused Ranjit Soren. Accused is acquitted and set at liberty. Accused is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C.

Accused is in judicial custody. So, jail authority is directed to release the accused Ranjit Soren forthwith, if he is not required in any other case subject to submission of bail bond.

20. A copy of this Judgment and Order shall be furnished to the District Magistrate, Chirang for information.

Given under my sign and seal of this Court on this the 14^{th} day 21. of August, 2018, at Kajalgaon, Chirang.

Special Judge.
Chirang Rajalgaon

Dictated and corrected by me,

(D.J. Mahanta)
Special Judge,
Special Judge,
Chirang, Kalalgaon

APPENDIX

Prosecution witness:

- PW 1 Sri Suban Hembram
- PW 2 Sri Poltan Murmu
- PW 3 Victim Miss X (name is withheld)
- PW 4 Smt. Baha Murmu
- PW 5 Sri Bagal Hembram
- PW 6 Sri Meghlal Hasda
- PW 7 Sri Suniram Hembram
- PW 8 SI Nikhil Ch. Ray (I.O.)

Exhibit (Prosecution):

- Ext-1 Statement of the victim U/S 164 Cr.P.C.
- Ext-2 Seizure list
- Ext-3 FIR
- Ext-4 Medical report
- Ext-5 Charge-sheet

Material Exhibit (Prosecution):

Material Ext-1 Birth Certificate of the victim

Defence Witness:

Ni

Defence Exhibit:

Nil

(D.J. Mahanta)
Special Judge,
Chirang. Kajalgaon