CAUSE TITLE POCSO Case No. 39/16

Informant: The victim 'X'.

Accused: Sri Nakul Murah,

S/o- Sri Undu Murah,

R/o- Dighalapather Sonowal Gaon,

PS- Naharkatia, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Sri RS Ekka, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 39/16 G.R. Case No. 814/16

> > State of Assam

-Vs-

Sri Nakul Murah

Charges: Under Sections 488/366/376 IPC, read with Section 4 of the

POCSO Act.

Date of evidence on : 09-01-17, 16-03-17, 30-08-17 and 25-04-18.

Date of argument : 25-05-18. Date of Judgment : 08-06-18.

JUDGMENT

- 1) The prosecution case in a narrow compass is that on 23-03-16, at about 9:30 pm, when the victim 'X' was sleeping along with her family members, the accused Sri Nakul Murah (hereinafter the accused person) broke into the house and gagged her and carried her forcefully towards the bank of the river of Balijan Gaon and forcefully committed rape on her and thereafter, he left her in the courtyard of her house and fled. The victim 'X' spent the night in the bari (courtyard of her house) and in the morning on 24-03-16, at about 4:00 am, the victim went to her brother-in-law Bikash Karmakar's house at Naharkatia Krishna Nagar and took shelter in his house. At about 6:30 pm, she had a discussion with her parents and then she lodged the ejahar with the police at Naharkatia Police Station. The ejahar was registered as Naharkatia PS Case No. 18/16 under Sections 457/366-A/376(2)(i) of the Indian Penal Code (IPC in short), read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short) and SI Saroj Doley was entrusted with the investigation.
- 2) The investigating officer (IO in short) embarked upon the investigation and recorded the statements of the witnesses. He forwarded the victim to the Magistrate for recording her statement and to the medical officer (MO in

- short) for medical examination. He prepared the Sketch-Map of the place of occurrence and on finding prima facie materials, he submitted Charge-Sheet against the accused under Sections 376(2)(i) IPC, read with Section 4 of the POCSO Act.
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Sections 448/366/376 IPC, read with Section 4 of the POCSO Act was framed, 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 including the MO and the IO.
- 5) I have heard the arguments forwarded by the learned counsel for both the sides.

POINTS FOR DETERMINATION:

- 6) To decide the case in its proper perspective, the following points are apposite for proper adjudication of this case:
 - i. Whether on 23-03-16, at about 9:00 pm, the accused committed house trespass by criminally trespassing into the victim's house to commit an offence?
 - ii. Whether at the same time and place, the accused kidnapped the victim 'X' by forcefully gagging her and carrying her towards the river bank?
 - iii. Whether at the same time and place, after carrying the victim towards the river bank, the accused committed rape on her?
 - iv. Whether at the same time and place, the accused committed penetrative sexual assault on the victim?
- 7) The victim 'X' testified as PW-1 that the accused is her neighbour and she used to address him as brother (Dada). The incident took place about nine months ago. At that time, she was inside her house situated at Dighala Pather Gaon. She was with her parents, but she was sleeping in a separate room. Her bamboo door was latched from inside and her parents were sleeping in their room. She woke up and the accused forcefully dragged her out of her house and took her to the jungle nearby. She raised alarm, but no one came to her rescue. The accused took her to the poultry shed and committed rape on her and thereafter, he fled. She was terrified to return

home and so she went to her cousin's house near Naharkatia Railway Station. She informed her cousin Debonti Karmakar about the incident. Her sister informed her brother-in-law Bikash Karmakar about the incident. After some time, her parents who were searching for her, reached her cousin's house and she informed her parents. Initially they went to the Gaonburah Rajib Hazarika's house and he advised her to lodge a case and at about 6:00 pm, they went to the police station. The ejahar was written by a shopkeeper near the Thana and he read over the ejahar and she affixed her signature on the same. Ext. 1 is the ejahar and Ext. 1(1) is her signature. The police forwarded her to the medical officer. She was also forwarded to the Magistrate for recording her statement. Ext. 2 is her statement recorded by the Magistrate and Ext. 2(1) upto Ext. 2(3) are her signatures. The police seized her garments. Ext. 3 is the Seizure-List and Ext. 3(1) is her signature. During investigation, the police seized two certificates regarding her age.

- 8) In her cross-examination, she testified that her marriage was solemnized after two weeks after the incident. She went to the Gaonburah's house at about 4:00 pm on the next day. She denied the suggestion that she had a love relationship with the accused person.
- 9) The evidence of PW-1 does not inspire confidence. She resides in the same house with her parents and it is not possible for an outsider to barge into a house and carry away a 16 year old girl stealthily, without the knowledge of her parents. Moreover, the victim has stated that she is 16 years, whereas, the opinion of the MO is that she is above 18 years and below 19 years.
- 10) The MO Dr. Ashrulina Deori testified as PW-5 that on 06-04-16, she examined the victim 'X' in connection with this case and on physical examination, radiological examination, she was of the opinion that the victim's age was above 18 years and below 19 years. Ext. 3 is the Medico-legal Report and Ext. 3(1) upto Ext. 3(3) are her signatures. The victim has testified that the place of occurrence is a jungle while in the FIR, she has stated that the accused committed rape on her near the bank of the river. The name of the river is not mentioned by the victim.
- 11) I have scrutinized the Sketch-Map Ext. 4. The Ext. 4 does not depict any river near the place of occurrence which is marked as 1(A). The place of occurrence is far away from the victim's house and the accused person's house and it is not possible for one person to carry or forcefully took away a

victim to such a distance without struggle and without the victim raising any alarm. There are several houses marked as 9, 10 and 11 near the place of occurrence including the house of the victim and the accused person. Anybody could have easily rescued the victim, had she been forcefully taken away by the accused person to such a distance as the second place of occurrence which is marked as Ext. 1(A) on the Sketch-Map.

- 12) The IO SI Saroj Dolay testified as PW-6 that he went to the place of occurrence and prepared Sketch-Map as shown by the villagers. Ext. 4 is the Sketch-Map and Ext. 4(1) is his signature.
- 13) It has already been held in my foregoing discussion that the scrutiny of the Sketch-Map clarifies that the girl of 18 years of age cannot be dragged to such a distance without a commotion or a struggle.
- 14) It is true that the statement of the victim is consistent with her statement under Section 164 CrPC. However, her evidence does not inspire confidence. In her statement under Section 164 CrPC, she stated that she was dragged out of her house towards the pond, whereas in her FIR, she stated that she was carried out of her house towards the bank of the river. In her testimony, she stated that she was dragged towards the jungle.
- 15) Bikash Karmakar was an important witness, because the victim took shelter immediately after the accident in his house at Naharkatia. But Bikash Karmakar could not be examined as a witness. Bikash Karmakar's wife, who is the victim's cousin, could not be examined as a witness. This lends a benefit of doubt to the accused.
- 16) Sri Kandru Kharia is the victim's father and he testified as PW-2 that the incident took place in the month of March, 2016. On the day of the incident, while they were sleeping, the accused came and took away their daughter from their house at 12:00 O' clock midnight. They found their daughter missing and they searched for their daughter and after some time, their daughter returned with a blanket wrapped around her. When they asked her, she stated that the accused took her forcefully with him and committed rape on her. Then they went to the Gaonburah who advised them to go to the police station. Their daughter lodged the ejahar and the police recorded their statements.
- 17) This evidence of PW-2 does not at all corroborate with the evidence of the victim 'X'. the victim stated that she went away after the incident to her

- cousin's house at Naharkatia, while her father stated that they found their daughter missing at 12:00 O' clock midnight and after some time, she returned home with a blanket wrapped around her. He did not mention that he went to Naharkatia. It is thereby held that this is a major contradiction which belies the evidence of PW-1.
- 18) The evidence of Sri Noren Murah as PW-3 depicts that the victim lodged a case and the police came to the village and arrested the accused person. He testified that the incident took place about a year ago and he heard in the village that the accused took away the victim and committed rape on her.
- 19) After scrutinizing the evidence, it can be held that his evidence remains hearsay evidence, because he has not testified from which person he heard about the incident. Hearsay evidence is not admissible. Similarly, the evidence of Sri Dipen Murah is held to be hearsay evidence, because he testified as PW-4 that the incident took place about a year ago and he heard from the villagers that the accused committed rape on the victim and so she lodged this case against the accused.
- 20) There was no remark of any marks of injury detected on the victim. It is thereby held that the evidence of the victim's father belies her evidence and the victim's evidence does not inspire confidence. The accused gets a benefit of doubt.
- 21) In view of my foregoing discussions, it is thereby held that the prosecution failed to prove beyond a reasonable doubt that the accused committed house trespass by criminally trespassing into the victim's house to commit an offence. The prosecution also failed to prove beyond a reasonable doubt that the accused kidnapped the victim the forcefully took her out of her house by gagging her mouth and committed rape on her. The prosecution also failed to prove beyond a reasonable doubt that the accused committed penetrative sexual assault on the victim. The victim is above 18 years, so the accused cannot be held guilty of the offence under the POCSO Act. Thereby the accused Sri Nakul Murah is acquitted from the charges under Sections 488/366/376 IPC, read with Section 4 of the POCSO Act on benefit of doubt and is set at liberty forthwith.
- 22) Destroy the seized articles as per law.

Judgment is signed, sealed and delivered in the open Court on the 8^{th} day of June, 2018.

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

> > Contd.

APPENDIX

List of witnesses:

- 1. PW-1 The victim 'X';
- 2. PW-2 Sri Kandru Kharia;
- 3. PW-3 Sri Noren Murah;
- 4. PW-4 Sri Dipen Murah;
- 5. PW-5 Dr. Ashrulina Deori; and
- 6. PW-6 SI Saroj Dolay.

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim 'X' recorded under Section 164 CrPC;
- 3. Ext. 3 Seizure-List;
- 4. Ext. 3 Medico-legal Report;
- 5. Ext. 4 Sketch-Map;
- 6. Ext. 5 Seizure-List; and
- 7. Ext. 6 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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