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

Special case No.3/2014

State of Assam
Vs.
Sri Jawngblam Narzary Accused

Present: Sri P.K.Bora, A.J.S. Sessions Judge, Kokrajhar

Ld. advocate for the accused : Mrs A.Choudhury
Ld. advocate for the State : Mr K.Saha (A.P.P.)

Evidence recorded on: 06.02.15, 09.4.15, 16.5.15 & 03.7.15

Argument heard on : 24.7.2015 Judgment delivered on : 05.8.2015

J U D G M E N T

- 1. The case of the prosecution in brief is that on 06.6.2014 one Sri Gohai Murmu lodged an Ejahar before the Officer-in-charge of Kochugaon P.S. stating that on 04.6.2014 in the evening her daughter victim X age about 12 years was raped by the accused and they caught the accused red handed.
- 2. Having received an Ejahar Police registered a case investigated the matter and finally submitted the charge sheet against the accused person. The accused person was arrested in the course of investigation. On his appearance before this Court the written charge under section 4 of the Protection of Children From Sexual Offences Act,2012 was

explained and read over to the accused to which the accused pleaded not guilty.

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3. **Point for determination:**

Whether the accused person committed penetrative sexual assault with the victim X who is above 12 years of age but below 18 years of age and thereby committed an offence punishable under section 4 of the Protection of Children From Sexual Offences Act, 2012?

4. Reasons and decision thereon:

In the course of the trial prosecution examined the victim X as PW1, informant Sri Gohai Murmu as PW2, Dr Sushma Brahma as PW3, Sri Manabendra Narzary as PW4, Sri Stiphen Mardi as PW5, Sri Thomas Narzary as PW6 and Sri Latak Das as PW7.

- 5. PW1 victim X in her evidence stated that on the day of the incident at about 5/5.30 p.m. while she was on her way to buy agarbatti by riding a bicycle then accused appeared before her near a culvert and caused her fell on the ground and thereafter she was gagged and carried in to a nearby jungle and raped her, that after the commission of rape she was left there and the accused fled away. She came to her house and narrated the story to her father. Police brought her to the court and she gave her statement in the court. She proved Ext.1 as Ejahar and Ext.1(1) as her signature.
- 6. PW2 informant Sri Gohai Murmu in his evidence stated that on the day of incident at about 5.30 p.m. her daughter came out to bus agarbatti and did not return back till 6 p.m., that at about 6 p.m. she came weeping. When he was asked about the reason she told that while on her

way to market a boy intercepted her and gagged her face and took her to a nearby jungle and raped her. Thereafter he went to the President of local ABSU, Sri Manu Narzary and informed about the incident. Both he and Manu Narzary went to the place of incident and a boy gave the name of accused, that

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that thereafter he and Manu went to the house of the accused. The accused was asked about the incident. First he did not confess. When he was slapped accused confessed his guilt, that on the following day a sitting was held and in that sitting Manu again asked about the incident to the accused and the accused pleaded guilty. Thereafter an FIR was lodged. He proved Ext.1 as Ejahar and Ext.1(1) as his signature.

- 7. PW3 Dr Sushma Brahma in her evidence stated that on 06.6.14 she was examined victim X and as per Radiological report the age of the victim was above 14 years of age before 18 years of age. She also stated that spermatozoa laboratory test report no spermatozoa found. She proved Ext.3 as medical report and Ext.3(1) as her signature.
- 8. PW4 Sri Manabendra Narzary in his evidence stated that on 06.6.14 at about 4/5 p.m. victim X being met him and informed that victim X was raped near a bridge, that he along with victim father's went to the place of incident and met a boy and old woman, that boy and an old woman told them that the accused had committed the offence. In the mean time some villagers from Adivashi village came, that thereafter they went to the house of the accused but the accused was not in the house. Later the accused was found. On the following day a matter was brought to the notice of office bearer at ABSU and a case was also lodged by the father of the victim girl.

9. PW5 Sri Stipen Mardi stated in his evidence that hearing about the information that one victim X was raped by a Bodo youth and he met some youths. They all went to the house of the accused. Before them the accused confessed his guilt. On that day the custody of accused was given to his 'Bibhini'. On the next day, a meeting was held. In the cross-examination he denied the suggestion that the accused did not confess his guilt before them.

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- 10. PW6 Sri Thomas Narzary stated in his evidence that in his presence victim identified the accused who allegedly raped her. Thereafter the accused was handed over to Kochugaon P.S.
- 11. PW7 Sri Latak Das stated in his evidence that on receipt of an FIR on 06.6.14 a case was registered and he was entrusted with the investigation of the matter. The victim was taken to the court for recording her statement. The victim was medically examined. He filed the charge sheet. He proved Ext.4 as charge sheet and Ext.4(1) as his signature. In cross-examination he stated before him the witness Sri Manabendra Narzary did not state that a boy and old woman did not tell him that they identified the accused.
- 12. The accused person denied indictment.
- 13. Heard argument advanced by the learned counsels for the sides.
- 14. Mr K.Saha, Addl.P.P., Kokrajhar submitted before this court that the prosecution has been able to prove the case against the accused person beyond all reasonable doubt. Mr Saha further submitted that to convict the accused under section 4 of POCSO Act the evidence of the victim only is sufficient. Mr Saha further submitted that in this case

accused failed to bring any circumstance to show that he was falsely implicated.

15. Mrs A.Choudhury learned counsel for the accused submits before this court that the medical evidence does not corroborate the prosecution story. Mrs Choudhury submitts that the medical examination of the victim girl does not show any violence mark on the private part of the victim and the spermatozoa test resulted in negative. Mrs Choudhury further submitted that the accused was not property identified.

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16. If we go through the evidence of the victim X (P.W1) it will be seen that she has given a vivid picture regarding how she was molested. She stated that since before the incident the accused was unknown to her. The accused first caused fall of the victim from her bicycle. Thereafter the accused gagged her face and took her to a nearby jungle where her pant was pulled off. He also removed pant of the victim and pushed his penis through vagina of the victim. Thereafter she made the victim free and the accused fled away from the scene. It has also come in her evidence that the place of incident was lonely place and she did not see any one there. After returning she informed the fact to her father PW2. PW2 went to the local ABSU office and with the President of the local ABSU they went to the place of incident and at the place of incident they met one boy and one old woman. They also told them that the accused in this case is person who committed the offence of rape on victim X. It has come in the evidence of PW6 that the victim X also identified the accused in the presence of assembled at the office of the ABSU. Thereafter the accused was handed over to the Police of Kochugaon P.S.

17. Mrs A.Choudhury learned advocate for the accused submitted before this court neither a boy nor old woman was produced before this court for identification of the accused. In this no TIP was held. According to prosecution victim identified the accused in a gathering in ABSU office. Accused explained no explanation to doubt this fact. The evidence produced before this court shows that the victim X who is age about 14 years identified the accused before the villagers and this identification appears to be not mistaken because the incident had taken place in the day time. No any circumstance has been brought while examination victim X and while recording the statement of accused under section 313 Cr.P.C. to show that the

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accused was falsely implicated in this case or victim X reaped some benefit by lodging a false case against the accused person. It has not been pleaded that the accused is made a victim of ethnic clash between Bodo and Adiyashi.

Mrs Choudhury further stated that no material to show rape on victim X has come in the medical examination on victim X. Spermatozoa test was also negative. There is no sign of sexual violence on the private part of the victim X. The alleged incident occurred on 05.6.14 at about 5.30 p.m. The victim was examined medically on the next day. Therefore absence of spermatozoa in the vagina swab of the victim will be quite natural. Doctor found ruptured hymen. Vagina admits one finger easily. Doctor found no injury or scratching mark. On the other hand the victim X stated in her evidence that the accused caused his penis entered into her vagina. The medical evidence is found to be contrary to the evidence of the victim X. For an offence of rape penetration is sufficient. It was not asked to the victim by the learned advocate for the accused whether after

penetration semen emission occurred or not. It was also not asked to the victim whether did see feel or see emission of semi liquied substance from the penis or not. If she had answered in positive the medical report of the doctor regarding the presence or absence of spermatozoa would have been a matter of issue. It was held in state of Uttar Pradesh vs Krishna Gopal:1988 AIR 2154 (SC) that where the eye witnesses account is found credible and trustworthy of medical opinion pointing alternative possibilities is not accepted and conclusive.

In <u>H.P. Vs Asha Ram AIR 2006 SC 381</u>, the Supreme Court held that- the evidence of a prosecutrix is more reliable that that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons, which necessitate looking for corroboration. The Courts

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should find no difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and it is found reliable.

In <u>Bharwada Bhoginbhai Hirjibhai State of Gujarat (AIR 1983 SC 753)</u>: the Hon'ble Apex Court held that-9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a result, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analize the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must dos so with a logical, and not

an opinionated, eye in the light of probabilities with our feet firmly placed on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the back drop of the society ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

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- (1) The female may be a 'gold digger' and may well have an economic motive- to extract money by holding out the gun of prosecution or public exposure.
- (2)She may be suffering from psychological neurosis and may see an escape from the neurotic prison by fantasizing or imagining a situation where she is desired, wanted, and chased by males.
- (3) She may want to weak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.
- (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a

compromising or embarrassing position, on account of personal or political vendetta.

- (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.
 - (6) She may do so on account of jealousy.
 - (7) She may do so to win sympathy of others.
 - (8) She may do so upon being repulsed.
- 10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large context of the sophisticated not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from

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amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred, (2) She would be conscious of the danger of being ostracized by the society including by her own family members, relatives, friends, and neighbours, (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to

secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.

18. From the aforegoing discussion it reveals that on the day of incident the accused committed rape on victim X finding her alone in a

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lonely place. Thus, the accused person is guilty under section 4 of the Protection of Children From Sexual Offences Act, 2012.

- 19. Heard the accused person on the point of sentence.
- 20. Considering the gravity of the offence I do not find any ground to give benefit to the accused person under section 360 Cr.P.C. while committing the offence of rape the accused did not torture the victim. Except fulfilling his lust the accused did not cause any injury to the person

of the victim. Even after knowing that there will a bicher the accused did not abscond. The accused is sentenced to suffer Rigorous Imprisonment for ten years and fine of Rs.5,000/- in default another Rigorous Imprisonment for six months. The period of detention undergone by the accused person during investigation and trial be set off. The victim X must be compensated under section 357A Cr.P.C. The victim X be paid a sum of Rs.75,000/- as compensation by the State through the District Legal Services Authority, Kokrajhar.

Given under my hand and seal of this Court on this 05th this day of August,2015.

Dictated & corrected by me

Special

Judge,

Special Judge, Kokrajhar Kokrajhar

Appendix

The prosecution witnesses are:

1. Victim X PW1

2. Sri Gohai Murmu PW2

3. Dr S.BrahmaPW3

4. Sri Manabendra Narzary...PW4

5. Sri Stipen Mardi PW5

6. Sri Thomas Narzary PW6

7. Sri Latak Das PW7

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<u>The Court Witness is</u>: Nil.

The exhibited documents are:

1. Ext.1 Statement u/s 164 Cr.P.C.

2. Ext.2 Ejahar

3. Ext.3 Medical report

4. Ext.4 Charge sheet

The Defence witness and exhibits: Nil

Special Judge,
Kokrajhar