CAUSE TITLE POCSO Case No. 67/15

Informant: Sri Laku Munda,

S/o- Late Atua Munda, R/o- Kachumari Gaon,

PS- Moran,

District- Dibrugarh.

Accused: Sri Birun Garh,

S/o- Sri Juliram Garh,

R/o- Boroline, Tiloijan Tea Estate,

PS- Moran,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Sri A Dutta, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 67/15 G.R. Case No. 2524/15

> > State of Assam

-Vs-

Sri Birun Garh

Charges: Under Section 8 POCSO Act.

Date of evidence on : 30-05-16, 30-05-16, 05-08-16 & 15-06-17.

Date of argument : 03-10-17. Date of Judgment : 03-10-17.

JUDGMENT

- 1) Prosecution case in a nutshell is that on 06-09-15, at about 2:00 pm, the ten year old victim X went for a visit along with her friend Bhendri and stayed in the house where they went for a visit. At about 12:00 O' clock midnight, while the victim X was sleeping, Sri Birun Garh (hereinafter the accused) committed rape on the victim X. An ejahar regarding this incident was lodged by the victim's father Sri Laku Munda. The ejahar was registered as Moran PS Case No. 314/15 under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short) and SI Pratap Borgohain was endorsed with the investigation. The investigating officer (IO in short) embarked upon the investigation and forwarded the victim for medical examination. The victim was also forwarded to the Magistrate for recording her statement under Section 164 CrPC. The IO went to the place of occurrence and prepared the Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, the IO submitted the Charge-Sheet against the accused Sri Birun Garh under Section 8 of the POCSO Act.
- 2) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 8 of the POCSO Act was framed and explained to the accused. The accused abjured his guilt and claimed innocence.

- 3) To substantiate the stance, the prosecuting adduced the evidence of six witnesses including the medical officer (MO in short), the IO and the Judicial Magistrate. The defence also cross-examined the witnesses to refute the charges.
- 4) I have heard arguments of both the sides.

POINT FOR DETERMINATION:

1. Whether the accused sexually assaulted the minor victim X?

Decision thereon and the reasons for the decision:

- 5) The victim X testified as PW-1 that the incident took place about a year back. She was staying in the accused person's house as a maid and attending his baby. The accused person has a family of two children and his wife. On the night of the incident, the accused slept with her and touched her breast and private parts. When she raised alarm, nobody awoke and the accused fled. On the next morning, she narrated about the incident to his wife, but his wife did not react. On the same day, she came to her house in the evening and informed her mother about the incident. Her mother informed her father about the incident and her father lodged an ejahar with the police. The police recorded her statement and forwarded her for medical examination. The police also forwarded her to the Magistrate for recording her statement.
- 6) In her cross-examination, she stated that the accused person's house consists of two rooms and his younger sister who is of her age also resides in the same house. Hir house is at a walkable distance from her house. On the night of the incident, there was Kirtan ceremony in the accused person's house and several people attended the Kirtan ceremony till the morning. On the night of Kirtan, she was sleeping alone in one room in the accused person's house and in another room, the accused, his wife and children were sleeping. The accused person's sister Vendri went to her own house on the night of the Kirtan.
- 7) Sri Laku Munda testified as PW-2 that the incident took place about 6/7 months ago. On the day of the incident, his daughter went to the accused person's house along with his sister. On the following day, his daughter informed him that the accused committed rape on her. Then he went to the police station along with his daughter. The police recorded their statements and forwarded the victim for medical examination. His daughter was also forwarded to the

- Magistrate for recording her statement.
- 8) In his cross-examination, the informant stated that his daughter went to the accused person's house to take care of his baby for about 6/7 days on payment of Rs. 200/- per week, but the accused failed to make the payment.
- 9) At this juncture, it is pertinent to state that the complainant mentioned in his FIR that the accused committed rape on his daughter and he also testified in the Court that the accused committed rape on his daughter. His evidence is contradictory to his daughter's statement. She stated in her crossexamination that the accused touched her breasts and private parts. She did not implicate and incriminate that the accused committed rape on her. the allegation of rape is an embellishment by the complainant. Let us see what the doctor says.
- 10) the medical officer Dr. Nibedita Shyam testified as PW-4 that on 10-09-15, she examined the victim X in connection with this case and found the following:

Genital organs well developed. Vulva is healthy. Hymen intact. Vagina is healthy. Uterus not palpable abdominally. Vaginal smear were taken from in and around the vagina, the result of which does not show any spermatozoa.

- 11) According to her opinion, the victim was above 12 (twelve) years and below 14 (fourteen) years old and there was no evidence of recent sexual intercourse on her person nor there was any evidence of injury detected on her body or private parts.
- 12) The evidence of the MO also depicts that hymen was intact.
- 13) After considering the evidence of the victim and the MO, it is thereby held that the accused did not commit penetrative sexual assault on the victim. The statement of the victim and her statement before the Magistrate under Section 164 CrPC are consistent. The statement of the victim reveals that the accused touched her breasts and her private parts. The evidence of Sri Markesh Kumar as PW-3 also supports the evidence of the victim. He stated that about eight months ago, the police went to Boroline of Tiloijan Tea Estate and asked him to show the accused person's house and accordingly, he showed the direction of the accused person's house to the police. Then he learnt that the accused person was alleged of attempting to commit rape on Laku Munda's daughter.

- 14) If we carefully analyze the evidence, it can be deduced that the accused person committed sexual harassment on the victim. The complainant could not clearly describe the incident and he stated that the accused committed rape on the victim. On the other hand, the victim who was a girl below 14 (fourteen) years at the time of the incident, could not clearly describe the incident.
- 15) The learned defence counsel laid stress at the time of argument that it is not possible to sexually harass a minor girl below 14 (fourteen) years in a house which consists of only two rooms.
- 16) After carefully analyzing the evidence, it is held that the accused did not commit sexual assault on the victim, but he committed sexual harassment on the victim, as described under Section 11(I) of the POCSO Act. Instead of sentencing the accused under Section 8 of the POCSO Act, he is sentenced under Section 12 of the POCSO Act by virtue of Section 222(2) of the Code of Criminal Procedure (CrPC in short).
- 17) I have considered the age and antecedents of the accused. I have heard the accused on the point of sentence. I have also considered the fact that he is a daily wage earner and he is only 21 (twenty-one) years of age and he is a father of two children. I have also considered the facts and circumstances of this case and I believe that confinement of the accused will create difficulty to take care of his minor children and wife. I have also considered the facts and circumstances of this case and all aspects while sentencing the accused.

SENTENCE:

- 18) The accused Sri Birun Garh is convicted under Section 12 of the POCSO Act and is sentenced to undergo SI (Simple Imprisonment) for 2 (two) months and a fine of Rs. 3,000/- (Rupees Three Thousand) only and in default of payment of fine, to undergo SI for 2 (two) months. The period of detention already undergone by the accused during investigation, and trial is set off with his custodial sentence.
- 19) Furnish free copies of judgment to the accused and to the District Magistrate.
- 20) The fine realized will be paid as compensation to the victim.

 Judgment is signed, sealed and delivered in the open Court on the 3rd day of October, 2017.

APPENDIX

List of witnesses:

- 1. PW-1 The victim 'X';
- 2. PW-2 Sri Laku Munda;
- 3. PW-3 Sri Markesh Kumar;
- 4. PW-4 Dr. Nibedita Shyam; and
- 5. PW-5 SI Pratap Borgohain.

List of Exhibits:

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

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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