

CAUSE TITLE

SPECIAL (POCSO) CASE NO.26/2017.

Informant : 'Y, the father of the victim 'X'.

Accused : Sri Dhaniram Konwar.
S/o Sri Nirmal Konwar.
Vill. No.2 Bahupathar
P.S. Narayanpur.
Dist. Lakhimpur.

ADVOCATES :

For the State: Mr. Madhab Gogoi, the learned Special Public Prosecutor.

For the Defence: Mrs. M.D.G. Baruah, Advocate.

**IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

P R E S E N T - S.P. Khaund, (MA Economics, LLB),
Special Judge,
Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.26/2017.

GR Case No.1527 of 2017.

State of Assam.

-versus-

Sri Dhaniram Konwar.

Charge : Under Section 376 IPC RW Sec.4 of the POCSO Act.

Dates of evidence. : 26.02.2018, 17.04.2018, 01.10.2018,
16.02.2019, 08.04.2019 and 03.06.2019.
Date of argument. : 05.03.2020.
Date of Judgment. : 03.10.2020.
Date of sentence. : 09.10.2020.

J U D G M E N T

1) The prosecution case in a nutshell is that on 30.05.2017 at about 1 pm, while the victim 'X', aged about 10 years, was alone at home, Sri Dhaniram Konwar (here-in-after referred as the accused person) came to her house, and induced her to go with him to the village 'Namghar' for 'Sakam'. Then, he took her into the nearby jungle and committed rape on her. The informant, 'Y', the victim's father, learnt about the incident when the victim disclosed the matter before the villagers present in the 'Namghar' (temple) for 'Sakaam' (religious rites).

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2) An ejahar regarding this incident was lodged by the victim's father 'Y', which was registered as Narayanpur P.S. Case No.81/ 2017 under Section 448/ 376 of the Indian Penal Code (IPC for short) RW Sec.4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

3) The Investigating Officer (I.O. in short), went to the place of occurrence, prepared sketch map and recorded the statements of the witnesses. The victim was forwarded to the Magistrate for recording her statement u/s 164 of the Code of Criminal Procedure (CrPC for short). She was also forwarded for medical examination. On finding prima facie materials, the I.O. submitted charge-sheet against the accused under Section 376 IPC RW Sec.4 of the POCSO Act.

4) On appearance of the accused, necessary copies were furnished and after hearing both the sides, a formal charge under Section 376 IPC RW Sec.4 of the POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.

5) To substantiate the stance, the prosecution adduced the evidence of 8 (Eight) witnesses, including the Medical Officer (M.O. in short) and the I.O., and the defence cross-examined the witnesses to refute the charges. The statement of the accused was recorded u/s 313(1)(b) CrPC, and the accused took the plea of total denial.

Submissions :

6) The learned Special Public Prosecutor, Mr. Madhab Gogoi laid stress in his argument that this case is an open and shut case. The accused deserves stringent punishment, considering the perverse conduct of the accused.

7) I have heard Mrs. M.D.G. Baruah's argument in defence.

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Points for determination :

8) On the backdrop of the rival contentions urged at the bar, the following points are apposite for proper adjudication of this case :

i) Whether on 30.05.2017 at about 1 pm, the accused committed rape on the victim, 'X', aged about 10 years ?

ii) Whether the accused committed penetrative sexual assault on the victim 'X', who is a minor ?

Decision thereon and the reasons for the decision :

9) To decide this case in its proper perspective, it is necessary to delve into the evidence.

10) Victim 'X' testified as PW.1 that the occurrence took place in the evening of 30.05.2017. On the day of the incident, when she returned home at about 2 pm from school, she did not find her parents and elder sister in the house as they went to the 'Namghar'. When she was on the way to Namghar, the accused met her and asked her to return to her house in order to bring 'Toumari' from their house. Then, the accused took her back to her house on his bicycle. The accused took her into their kitchen, and removed her garments from the lower part of her body and put his penis into her vagina and thereby committed bad acts (rape) on her. Then, she rushed to the 'Namghar' and narrated the incident to her mother, 'Z', who subsequently informed the matter to the villagers. An ejahar was lodged and thereafter, she was forwarded to the court by the police, where her statement was recorded. She (PW.1) proved her statement as Ext.1 and Ext.1(1), 1(2), 1(3) and 1(4) are her signatures. She was also examined by the doctor in the hospital.

11) In her cross-examination, PW.1 testified that she did not mention in her statement to the police that while the accused assaulted her, she

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did not scream as she was terrified that the accused would kill her. Her statement before the Magistrate was according to the narrative of her mother.

12) 'Z' is the mother of the victim and she testified as PW.2 that the incident occurred about a year ago. At the time of occurrence, she was in the village Namghar, which is located about 1/2 km away from her house, and at that time, her daughter, 'X' went to the Namghar crying and informed her that the accused committed rape on her. She also disclosed about the incident to the villagers, who were assembled at the 'Namghar'. On the Gaonburah's advice, an ejahar was lodged with the police at Narayanpur Police Station.

13) In her cross-examination, PW.2 denied about her omission to state before the police that her daughter informed her about the incident.

14) 'Y' is the victim's father and he testified as PW.3 that at the time of occurrence, he was in the 'Namghar' situated about 1/2 a kilometer away, along with his wife. His daughter, 'X' was alone at the home. While they were in the 'Namghar', his daughter, 'X' reached the 'Namghar' in tears and informed them that the accused committed rape on her inside the house. The people assembled in the 'Namghar' also learnt about the incident from the victim. On the villagers' advice, he lodged the ejahar against the accused. Thereafter, police forwarded the victim for medical examination and recorded her statement.

15) In his cross-examination, PW.3 denied about his omission to state before the police that his daughter was in tears when she reached the 'Namghar' and she informed him that the accused committed rape on her.

16) Sri Tanka Gogoi testified as PW.4 that the incident occurred on 30.05.2017 at about 10 am. When he returned home in the evening, he learnt from his wife, Smti Bobi Gogoi that the accused committed rape on the victim girl in her grandfather's house. The informant's house is

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located about 20 metres away from his in-law's house. When, he went to the victim's house, he learnt from the victim that when she was alone in her grandfather's house, the accused committed rape on her.

17) In his cross-examination, PW.4 denied his omission to state before the police that he asked the victim about the incident.

18) Sri Niranjan Duwarah testified as PW.5 that the occurrence took place on 30.05.2017 in the victim's house. At the time of occurrence, he was in the Namghar. The victim's parents were also present in the Namghar. The victim came to the Namghar and informed that the accused person committed rape on her in her house. The accused already reached the 'Namghar' before the victim had reached, but when the victim was narrating about the incident, the accused fled from the 'Namghar'. They chased the accused, apprehended him and brought him back to the 'Namghar'. The accused confessed before the people assembled in the 'Namghar' that he committed rape on the victim.

19) This witness was cross-examined in extenso. To avoid prolixity, his cross-examination will be discussed at the appropriate stage.

20) Sri Hiraakjyoti Baruah testified as PW.6 that the incident occurred on 30.05.2017 at about 1 pm in the victim's grandmother's house. At that time, he was at Kamalpur centre. At about 1 pm, he was informed by Sri Bubul Bora over phone that the the accused committed rape on the victim, and this fact was narrated by the victim herself to the people present in the 'Namghar'. Then, he along with some other youths went to the 'Namghar' and they searched for the accused. They found the accused on the back side of a house, which is located at a distance of about 1 kilometer from the 'Namghar', apprehended him and brought him to the 'Namghar'. The accused confessed to the villagers assembled in the 'Namghar' that he committed rape on the victim girl.

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The matter was informed to the police by the Gaonburah. Thereafter, they took the accused to Narayanpur Police Station and handed him over to the police.

21) His cross-examination will also be discussed at the appropriate stage.

22) Dr. Pinchana Namchoom testified as PW.7 that on 31.05.2017, she was serving as Medical & Health Officer-1 at North Lakhimpur Civil Hospital, and on that day, at about 11.55 am, while she was on OPD duty, she examined the victim 'X', and found the following :

“ Relevant Medical History : According to the victim girl, on 30.05.2017 at around 2 pm, when she was alone at home, one person of Konwar title of their own village came and had sexual intercourse with her.”

Findings of Medical Examination:

1. Identification Mark : A mole at left upper part of nose.
2. Height and Weight : 4'5" ; 30 kg.
3. General Configuration : Average.
4. Teeth : 24 nos.
5. Breast : Not developed.
6. (a) Axillary hair : Absent.
(b) Pubic Hair : Absent.
7. Private Parts
 - (a) Vulva : Normal.
 - (b) Vagina : Inflamed.
 - (c) Hymen : Ruptured.
 - (d) Uterus : Normal size.
8. Laboratory Examination for spermatozoa detection : No spermatozoa seen.
9. Ossification test for age determination : The present age of the victim girl is above 9 years and below 15 years.
10. External Injury : Except private parts, there is no injury sign on any other part of the body.

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The M.O. opined that there are signs of recent sexual intercourse. There are forceful violation marks on her private parts. (Inflamed vagina, ruptured hymen). The present age of the victim girl is above 9 years and below 15 years.

She proved the Medical Examination Report of the victim girl as Ext.2 and Ext.2(1) is her signature.

23) SI Padmadhar Buragohain testified as PW.8 that on 30.05.2017, he was serving as 2nd officer at Narayanpur P.S., and on that day, 'Y' lodged an ejahar at Narayanpur P.S. and on receiving the ejahar, the O.C. of Narayanpur P.S. registered a case vide Narayanpur P.S. Case No.81/2017 u/s 376 IPC RW Section 4 of the POCSO Act, and entrusted him to investigate the case. Accordingly, he took up the charge of investigation, and got the victim girl examined by a doctor at North Lakhimpur Civil Hospital. He visited the place of occurrence on 31.05.2017 and prepared the sketch map. He proved the sketch map as Ext.3 and Ext.3(1) is his signature. He got the victim's statement recorded u/s 164 CrPC, arrested the accused and forwarded him to the court. He seized the underwear of the victim by preparing Seizure List. He proved the Seizure List as Ext.4 and Ext.4(1) is his signature. After completion of the investigation, he submitted the charge-sheet against the accused u/s 376 IPC RW Sec.4 of the POCSO Act. He proved the charge-sheet as Ext.5 and Ext.5(1) is his signature.

ANALYSIS OF THE EVIDENCE

24) The evidence of the witnesses are homogeneous and corroborative. The learned defence counsel through the cross-examination of the witnesses tried to portray that the place of occurrence was not properly defined. According to the victim, the accused committed rape in the kitchen. The victim has specifically described the place of occurrence as the kitchen because it is clear that the accused asked for a 'Toumari', which is a type of ladle, which can be found only in the

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kitchen. It can be safely held that the victim's statement u/s 164 CrPC clearly reveals that the accused assaulted her twice. After the assault, when the victim, who was upset, complained about his act, the accused again took her to the bamboo grove and again sexually assaulted the victim.

25) The I.O., Sri Padmadhar Buragohain testified as PW.8 that on 30.05.2017, 'Y' lodged an ejahar, which was registered as Narayanpur P.S. Case No.81/ 2017 u/s 376 IPC and u/s 4 of the POCSO Act, and he was endorsed with the investigation. During investigation, he prepared the sketch map, Ext.3, wherein Ext.3(1) is his signature. According to the sketch map, the place of occurrence is a bamboo grove. This place of occurrence has been properly described by the victim u/s 164 CrPC. Being a young girl, she is vulnerable and when she was in the court, she may have unknowingly missed to depose about the subsequent place of occurrence, considering the trauma, she went through when she testified about the sexual assault by a middle aged man.

26) There is not even an iota of doubt that the victim was sexually assaulted because the medical officer's evidence clearly reveals that she could detect injuries on the victim's private parts. Signs of recent sexual intercourse were visible because there were signs of forceful violation marks on her private parts. Her vagina was inflamed and her hymen was ruptured. Age of the victim is 9 to 15 years. It is also amply clear that the victim will be on the lower side of the range given by the medical officer because the Ext.2 clearly depicts that the victim's axillary hair and pubic hair were absent and breasts were not even developed.

27) It was the prosecution's duty to exhibit the F.I.R. However, the I.O.'s evidence reveals that the informant, 'Y' has lodged the ejahar to the effect that the accused took his daughter into a jungle and committed rape upon his minor daughter 'X'. It is also apt to mention at this juncture, that the victim may have failed to mention about the

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subsequent assault in the bamboo grove, but her statement u/s 164 CrPC is consistent to her testimony in the court and the minor victim's evidence inspires confidence. Her statement u/s 164 CrPC clearly depicts that the accused assaulted her inside the house as well as in the jungle. The astute defence counsel ingeniously avoided to cross-examine the victim regarding the subsequent place of occurrence i.e., the bamboo grove. The statement of the victim u/s 164 CrPC is also accepted as evidence. It has been proved as Ext.1. It is clear that no contradiction could be elicited through the cross-examination of the victim.

28) The evidence of PW.1 is corroborated by the evidence of PW.2. No contradiction could be elicited through the cross-examination of PW.2. The evidence of PW.1 and PW.2 is also corroborated by the evidence of PW.3. No contradiction could be elicited through the cross-examination of PW.3. The evidence of sexual assault could not be repelled even by the meticulous and skilled cross-examination of the learned defence counsel. The evidence of PW.1, PW.2 and PW.3 is also corroborated by the evidence of PW.4.

29) PW.4 testified that the victim was assaulted in her grandmother's house, which is located about 20 meters away from the victim's house. PW.6 also testified that the victim was assaulted in her grandmother's house. PW.6 learnt about the incident from Sri Bubul Bora. PW.5 testified that the victim was assaulted in her house. It is germane to mention at this juncture that in this part of the country, the population generally follow the joint family system, and grand parents' house is also considered to be the descendant's own house. Especially, the legal heirs usually consider their grand parents' house as their own house. The victim was a young girl and she had to return home while she was proceeding towards the 'Namghar' searching for a ladle for preparation of 'Kheer' in the 'Namghar'. The victim went from one place to other and finally she reached the 'Namghar' and before she reached 'Namghar', she was assaulted twice by the accused. Naturally, the victim will be confused and her confusion regarding the place of

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occurrence does not absolve the accused. It is obvious that when an incident is narrated to a gathering in a place of worship or such a gathering, there may be dissimilarities between the narratives. Each and every sentence will not be similar and this resulted in a confusion in the place of occurrence. There appears to be no reason as to why the victim will accuse a middle aged person of having committed sexual assault on her. The victim has properly narrated how she was sexually assaulted by the accused. At this age, it is not possible for a minor to narrate a sexual act until and unless, she has been sexually assaulted.

30) The medical officer's evidence clearly reveals that the victim was sexually assaulted. The victim was immediately examined after the incident and the injuries detected were severe injuries because she was a minor at the time of the incident. The incident occurred on 30.05.2017 and the victim was examined on the following day i.e., on 31.05.2017.

31) Over and above, the corroborative evidence, the evidence of PW.6 reveals the extra judicial confession by the accused. PW.6 was cross-examined by the learned defence counsel, but the confession of the accused regarding his complicity could not be contradicted and negated. He has categorically testified in his evidence in chief that the accused confessed that he committed penetrative sexual assault on the victim. PW.5 also testified that the accused confessed that he is complicit, but the learned defence counsel was successful to contradict his statement u/s 161 CrPC because the I.O. (PW.8) has admitted in his cross examination that PW.5 did not mention in his statement u/s 161 CrPC that the accused confessed his complicity. The remaining part of the cross-examination of the I.O. is not discussed because no contradiction could be elicited through the cross examination of the I.O. and the cross examination of the witnesses regarding the complicity of the accused in the offence of penetrative sexual assault. The accused failed to exculpate himself and his answers to the circumstances

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arising against him were evasive because he denied all the circumstances arising against him in a blanket manner.

32) In view of my foregoing discussions, it is, thereby, held that the prosecution could prove beyond reasonable doubt that the accused committed penetrative sexual assault on the victim 'X'. This case is regarding an offence in the year, 2017, so, by virtue of Section 42 of the POCSO Act, it is held that a befitting punishment u/s 4 of the POCSO Act will meet the ends of justice. It is also held that the accused failed to prove that he had no culpable mental state. This is a case of sexual assault not once, but twice. It is also safe to presume that the accused committed penetrative sexual assault on the minor victim 'X'.

33) The accused person is produced before the court today. He is sent back to the custody and is directed to be produced on 09.10.2020 for hearing on the point of sentence. Both the parties can adduce evidence if they are willing to, on the question of sentence.

(S.P. Khaund)
Special Judge,
Lakhimpur, North Lakhimpur.

ORDER ON SENTENCING**Dtd. 09.10.2020.**

34) I have heard the accused on the point of sentence. I have heard both the sides. The learned defence counsel has prayed for a lenient punishment.

35) The medical officer has opined that the victim's age is within the range of 9 to 15 years. This does not appear to be within the tenets of medical jurisprudence. The medical officer has given a range of 6 years, making it cumbersome for this court to assess the approximate age of the victim. Considering the physique of the victim, she is considered to be on the lower side, but she is not held to be below 12 years.

36) The accused deserves stringent punishment. I have heard both the parties. The accused has prayed for leniency as he is the father of two minor children and as he is also the sole bread winner of the family. The accused acted with perversity, reflecting his depraved mentality. The accused had no earlier antecedents of any criminal offence.

37) After hearing both the parties and considering the submission of the accused on the point of sentence, I believe that a sentence of imprisonment for 10 (ten) years will meet the ends of justice.

SENTENCE

38) The accused, Sri Dhaniram Konwar is convicted u/s 4 of the POCSO Act, and he is sentenced to undergo Rigorous Imprisonment for 10 (ten) years and to pay a fine of Rs.1,000/- (Rupees One Thousand) only, and in default of payment of fine, to undergo Rigorous Imprisonment for 1 (one) month. The period of detention of the accused during investigation and trial is set off with the custodial sentence.

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39) The fine deposited by the accused will be submitted in the 'cost fund' of the District Legal Services Authority, Lakhimpur, North Lakhimpur.

40) 'X' is the victim of this case as described u/s 2 (wa) of the CrPC. This case is also recommended for compensation to the District Legal Services Authority, Lakhimpur, North Lakhimpur, to decide the compensation to be awarded to the victim. Any interim compensation paid earlier will merge with the total compensation.

Send a copy of this Judgment & Order to the District Legal Services Authority, Lakhimpur, North Lakhimpur, to assess the compensation to be paid to the victim.

Judgment is signed, sealed and delivered in the open Court on the 9th day of October, 2020.

(S.P. Khaund)
Special Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Special Judge,
Lakhimpur, North Lakhimpur.

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APPENDIX**Special (POCSO) Case No.26/ 2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Victim 'X'.
2. PW.2 - 'Z', the mother of the victim, 'X'.
3. PW.3 - 'Y', the father of the victim, 'X'.
4. PW.4 - Sri Tanka Gogoi.
5. PW.5 - Sri Niranjan Duwarah.
6. PW.6 - Sri Hirakjyoti Baruah.
7. PW,7 - Dr. Pinchana Namchoom, M.O. of the case.

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Statement of the victim 'X'.
2. Ext.2 - Medical Report.
3. Ext.3 - Sketch map.
4. Ext.4 - Seizure List.
5. Ext.5 - Charge-sheet.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Special Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.