

CAUSE TITLE**Sessions Case No.100(N.L.)2014.**

Informant : Sri Srimanta Das.

Accused : Sri Thaneswar Das.

S/o Lt. Khagendra Das.

Vill. Kachamaria.

P.S. North Lakhimpur.

Dist. Lakhimpur.

ADVOCATES :

For the State: Mr. J. Saikia, the learned Public Prosecutor.

For the Defence: Mr. D. Payeng, Advocate.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smti. S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Sessions Case No.100(NL)2014
G.R. Case No.474/2014

State of Assam

Vs

Sri Thaneswar Das

Charge: Under Section 341/326 I.P.C. R.W. Section 8 of the POCSO Act.

Date of evidence on : 29/09/2014, 30/03/2015, 26/05/2015,
18/08/2015, 30/09/2015, 30/09/2015,
16/05/2016, 27/06/2016, 02/08/2016,
11/07/2018, 11/06/2019.

Date of argument : 19/11/2020.

Date of judgment : 03/12/2020.

J U D G M E N T

1) The prosecution case which unfolds is that on 26.03.2014 at about 4 pm, the victim 'X' was returning home from the farm towards her house, when the accused obstructed her and

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sharply bit on her cheek and groped her chest and outraged her modesty in the process. The victim then returned home and informed her elder brother and sister-in-law about the incident, who in turn confronted the accused, who was approaching on his bicycle. The accused was then apprehended by the public and handed over to the police. An ejahar regarding this incident was lodged by the victim's elder brother, say 'Y', which was registered as North Lakhimpur PS Case No.246/2014 u/s 341/ 326 of the Indian Penal Code, 1860 (IPC for short) RW Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

2) The Investigating Officer swung into action and recorded the statements of the witnesses. He forwarded the victim for medical examination. The victim was also forwarded to the court for recording her statement u/s 164 of the Code of Criminal Procedure (CrPC for short). The bicycle was seized from the accused and the sketch map was prepared. On finding prima facie materials, charge-sheet was laid against the accused u/s 341/ 326 IPC RW Section 8 of the POCSO Act.

3) On appearance of the accused, copies were furnished and after hearing both sides, this case was committed for trial, vide order dtd. 16.06.2014 passed by the learned Chief Judicial Magistrate, in GR Case No.474/ 2014.

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4) After hearing both the sides, a formal charge u/s 341/ 326 IPC RW Section 8 of the POCSO Act, was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.

5) To substantiate its stance, the prosecution adduced evidence of 11 (eleven) witnesses and exhibited several documents. The defence cross-examined the witnesses to refute the charges. On the incriminating circumstances arisen against him, the answers of the accused to the question u/s 313 (1)(b) CrPC depicts the plea of total denial. His answers were evasive in manner.

SUBMISSIONS

6) The learned P.P. Mr. J. Saikia laid stress in his argument that this is an open and shut case. The accused, who was 32 years old displayed his depravity by causing sexual harassment to a minor victim. The accused deserves stringent punishment. On the contrary, the learned defence counsel laid stress in his argument that the victim's testimony belies her evidence. No torn garments were seized by the police. The victim testified that she was accompanied by a child, who was also pushed aside by the accused, but the said child was not sent for medical examination, despite being pushed away violently. The bite marks were not caused by the accused, but by the small girl, and so on and so forth.

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POINTS FOR DETERMINATION :

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

i) Whether the accused wrongfully restrained the minor victim when she was on her way back home from the farm?

ii) Whether the accused voluntarily committed grievous hurt on the minor victim by biting her cheek?

iii) Whether the accused committed sexual assault on the minor victim 'X'?

DECISION THEREON AND THE REASONS FOR THE DECISION :

8) The minor victim 'X' deposed as PW.1 that the accused was not known to her. She met him for the first time on the day of the incident, which occurred about five months ago (from 29.09.2014). On the fateful day at about 4.35 pm, she was heading homewards along with her niece, who was three years old from the paddy field. Suddenly, the accused sprang out and held her and bit her on her cheek. He groped her chest and pinned her to the ground. He ripped off her clothes. Somehow, she managed to escape from his clutches.

9) The victim showed the bite marks on her cheek to the court.

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The evidence of PW.1 further proceeds that she informed her elder brother 'Z' and sister-in-law about the incident. Her brother then informed the Gaonburah about the incident. The PW.1's evidence further proceeds that her niece started crying. She came to know that the accused person's name is Thanesar Das. The Gaonburah informed the police about the incident. The police recorded her statement and forwarded her to the Magistrate, who recorded her statement, Ext.1, wherein, Ext.1(1), 1(2) and 1(3) are her signatures. She was also forwarded to the doctor for medical examination.

10) The evidence of PW.1 is corroborated and supported by the evidence of 'Y', who testified that the incident occurred in the year, 2014. On the fateful day at about 4.30 pm, when his younger sister 'X' was returning home from the paddy field, the accused restrained her and bit on her cheek and groped her chest. The victim was accompanied by a small girl, who was about 4 ½ years old. The accused pushed away the small girl and misbehaved with his sister. His sister raised alarm and the accused fled. The victim then returned home and informed him about the incident. He went out of his house and he saw the accused approaching on his bicycle. The evidence of PW.2 further proceeds that they apprehended the accused and handed over him to the police and he lodged the ejahar, Ext.2, wherein Ext.2(1) is his signature.

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11) The evidence of PW.1 and PW.2 is also corroborated and supported by the evidence of PW.3, say 'A', who testified that the incident occurred on 26.03.2014 at about 4.30 pm. At that time, she was at home and the victim came running to the house and on being asked, the victim informed her that while she was homeward bound, one boy restrained her and groped her and bit her cheek, and attempted to commit rape on her by pinning her to the ground. She, somehow, managed to escape from the clutches of the accused. At that time, 'X' was also carrying her (PW.3's) three year old child and the accused pushed away the child from the victim's lap. She (P.W.3) heard a commotion and went to the place of occurrence along with her husband, 'Z'. The place of occurrence is an embankment and they saw the accused trudging along with his bicycle. The victim pointed towards the accused and they confronted him. The accused, then, admitted his complicity, and the people gathered around the place of occurrence. They, later, informed the 'Mahila goot' and the Gaonburah about the incident, and finally she informed the police about the incident, and they handed over the accused to the police. Subsequently, when the Gaonburah asked the name of the accused in the village meeting, she learnt that his name is Thaneswar Das.

12) The evidence of PW.1, PW.2 and PW.3 is corroborated by the evidence of 'Z'. He testified that the victim is his younger sister

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and the accused is known to him. The incident occurred in the evening of 26.03.2014 at about 4 pm. At that time, his younger sister was heading home from the farm along with a three year old little girl. At that time, the accused restrained her in the paddy field and groped her breast and bit her on her cheek and outraged her modesty. The little girl rushed to their house and informed his wife, 'A' about the incident. Thereafter, they went out in search of the accused person and apprehended him when he was pointed out by his victim sister. He informed the matter to the 'Mahila Samitee' and the Gaonburah, and the accused was handed over to the police. This witness was not cross-examined.

13) The evidence of the VDP President corroborates the evidence of other witnesses, PW.1, PW.3 and PW.5. Sri Tilak Das (VDP President) testified as PW.6 that the incident occurred about 1 1/2 years back (from 30.09.2015). It was evening and the accused bit the victim girl's cheek in the paddy field. The victim informed him about the incident. He as well as the police found the accused in the victim's house, and they handed over the accused to the police.

14) The evidence of PW.1, PW.2, PW.3 and PW.5 is supported and corroborated by the evidence of the Gaonburah, Sri Hemanta Bora, who testified as PW.9 that the accused as well as the victim are both known to him. About two years ago, the accused

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person's mother, Bulandi called him and informed him that the accused person was being confined in the victim's house at Koliyani. He went there and found the accused in the victim's house. The police arrived and took away the accused. He, then, came to know that there was some dispute between the accused and the victim. He noticed a reddish injury mark on the victim's cheek, but he could not recall whether it was the right or the left cheek. The police, then, seized the bicycle and he affixed his signature on the Seizure List (Ext.4), wherein Ext.4(2) is his signature.

15) Thus, the evidence of PW.1, PW.3 and PW.5 that the Gaonburah was informed about the incident is supported by the evidence of the Gaonburah, who testified as PW.9. Another witness, Sri Lorakan Das @ Bhaba Das testified as PW.7 that the accused is from Kasamari village and his house is about 4 kms away from his house. The victim resides with her family on the embankment of the river, 'Bhimpara'. The incident occurred about four years ago. At the time of incident, he went to Dholghat embankment to trade in fish, and then, he noticed the accused was surrounded by the local people in the victim's homestead. Thereafter, the police came and took away the accused. He heard from the local people, who assembled there that a quarrel took place between the accused and the victim. His evidence supports the fact that the police arrested the

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accused at the time of the incident. He testified that the incident occurred about four years ago. He was present in the court on 11.07.2018. According to PW.9, who gave his statement in the court on 02.08.2016, the incident occurred about two years ago. The hostile witness, PW.8 testified that the incident occurred in the year, 2014. According to PW.6, the incident occurred about 1 1/2 years back. PW.2, PW.3 and PW.5 testified that the incident occurred on 26.03.2014 at about 4.30 pm.

16) Thus, it is clear from the evidence of PW.1, PW.2, PW.3, PW.4, PW.5, PW.6, PW.7, PW.8, PW.9 and PW.10 that the incident occurred in the afternoon of 26.03.2014. It will be trite to mention that all the witnesses cannot accurately mention the time and place of the incident. Memories fade with passing of time and a normal human being cannot remember the accurate date and time of each and every incident, but in the instant case, the witnesses have given the correct date and time of the incident.

17) Two witnesses were declared hostile. The evidence of Sri Bhaba Das @ Lorakan Das was also recorded earlier by my learned Predecessor as PW.7. Bhaba Das again deposed as PW.10. He was declared hostile by this court. He denied the suggestion of the prosecution that he stated u/s 161 CrPC that, *"On 26.03.2014 at about 4.30 pm, he received an information*

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from the people that while 'X' was returning home, one boy misbehaved with her and the boy was apprehended by 'X's elder brother and sister-in-law and others and he was brought to the victim's house, and then, he went to the victim's house and saw the boy, and when he asked the boy his name, the miscreant replied that his name is Thaneswar Das. Then, he informed the matter to the Officer-in-charge at North Lakhimpur P.S. and Thaneswar Das confessed that he restrained 'X' on the road and bit her cheek." The evidence in chief of P.W.7 as P.W.10 is similar. P.W.7 and P.W.10 is the same person.

18) The other hostile witness, Sri Chandra Kanta Medhi testified as PW.8 that the incident occurred in the year, 2014. He was informed by 'X's father that while his daughter was heading home from the paddy field, the accused indulged in eve teasing. Then, he (PW.8) asked the victim and she replied that the accused was under influence of alcohol and he indulged in eve teasing and verbally abused using obscene words. This witness was also declared hostile on the prayer by the prosecution and he denied the suggestion of the prosecution that he stated u/s 161 CrPC that, *"he came to know from the inmates of Mitharam's house that his daughter, 'X', who was 14 years old was heading home and she was restrained by the accused and the accused bit her on her left cheek and laid her on the ground*

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and touched her chest. Then, the accused was apprehended and confined in the victim's house and when he received the information, he went to the place of occurrence."

19) Although, PW.7 and PW.8 were declared hostile, yet their evidence-in-chief supports the fact that the accused was apprehended in the victim's house. PW.8's evidence-in-chief also depicts that the victim alleged that the accused was abusive towards her. On recapitulating the entire evidence, it can be safely held that there is clinching evidence against the accused.

20) The incident, which can be succinctly culled out is that, on the fateful day, the victim was heading home when she was restrained by the accused on the mid way. Then, the accused bit her cheek and misbehaved with her by grabbing her inappropriately. He also pinned her to the ground. The statement of P.W.1 u/s 164 CrPC is consistent to her testimony. The evidence of the victim inspires confidence.

21) The learned defence counsel laid stress in his argument that the victim's torn clothes were not seized by the I.O. and the teeth marks detected on her left cheek depicts that three teeth marks were detected on upper part and two teeth marks on the lower part, which implies that the teeth marks were uneven. The learned defence counsel submitted that the teeth marks were uneven and it cannot be believed that the teeth marks were

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impressed by an adult. This argument of the learned defence counsel is de hors medical jurisprudence. The learned defence counsel suggested that a little child who was with the victim made those teeth marks on the victim's cheek. No stretch of imagination will lead us to believe that a weaker child may have uneven teeth and a grown up man will have even teeth so that a bite of a grown up man will be even and not uneven. This argument of the learned defence counsel can be safely brushed aside. The evidence closes in on the accused and the defence was not left with a comparatively logical argument.

22) The medical officer's evidence clearly depicts that the teeth marks were detected on the victim's cheek on her examination. Dr. Diganta Dutta testified as PW.4 that on 26.03.2014, he was serving as M & HO at North Lakhimpur Civil Hospital. On that day, he examined 'X' and he detected five bite marks on the victim's left cheek. Three bite marks on the upper side and two on the lower side of the size 6 cm x 2.5 cm. Ext.3 is the Medico Legal Report and Ext.3(1) is his signature.

23) The I.O.'s evidence depicts that he did not seize the victim's garments. Sri Narayan Tamuly testified as PW.11 that on 26.03.2014, while he was serving as 2nd Officer at North Lakhimpur P.S., the Officer-in-charge entrusted him to investigate the case, which was registered as North Lakhimpur P.S. GD Entry No.1154 dtd. 26.03.2014 at 8.05 pm. Ext.5 is the G.D. entry. He

embarked upon the investigation and proceeded to the place of occurrence and reached the place of occurrence at 8.40 pm. He went to the victim's house as he was informed that the accused was confined in the victim's house by local people. He seized the bicycle from the accused in the victim's house itself vide Ext.4, wherein Ext.4(3) is my signature.

24) At this juncture, it is germane to mention that the evidence of PW.1, PW.2 and PW.3 clearly affirms that the accused was riding a bicycle right before the accident. It is true that it was the I.O.'s duty to seize the torn garments, but he ended up by seizing the bicycle.

25) The I.O.'s evidence as PW.11 further proceeds that he recorded the statement of the victim. The victim's elder brother then lodged the ejarah, which was registered as North Lakhimpur P.S. Case No.246/2014 u/s 341/ 326 IPC RW Section 8 of the POCSO Act, and he was endorsed to continue the investigation. He recorded the statement of the 'Y' and arrested the accused. On the following day, he prepared the sketch map of the place of occurrence. Ext.6 is the sketch map. He recorded the statement of the witnesses. He forwarded the victim for medical examination and also for recording her statement u/s 164 CrPC. On finding sufficient materials, he submitted charge-sheet

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against the accused. Ext.7 is the charge-sheet, wherein Ext.7(1) is his signature.

26) The I.O. was cross-examined in extenso. **No contradiction as per Section 145 of the Indian Evidence Act, 1875, (Evidence Act for short) could be elicited through the cross-examination of the I.O. The only contradiction that could be elicited through the cross-examination of the I.O. and the cross-examination of PW.1 and PW.3 is that PW.1 has not mentioned u/s 161 CrPC that the accused person ripped off her clothes.** The statement of the victim u/s 164 CrPC proved as Ext.1 clearly reveals that the accused ripped off her clothes. The omission of PW.3 is not note-worthy. The other argument of the learned defence counsel is that all the witnesses are related witnesses. It is *ex facie* evident that some of the prosecution witnesses are related and the other remaining prosecution witnesses are not related to the victim.

27) At this juncture, I would like to rely on the decision of Hon'ble the Supreme Court in Karulal and others Vs the State of Madhya Pradesh in Criminal Appeal No.316 of 2011, decided on 09/10/2020. It has been observed that "The above precedents make it amply clear that the testimony of the related witness, if found to be truthful, can be the basis of conviction and we have

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every reason to believe that P.W.3 and P.W.12 were immediately present at the spot and identified the accused with various deadly weapons in their hands”.

28) Reverting back to this case, it is held that in my foregoing discussions it has already been held that the evidence of the brothers and sister-in-law of P.W.-1 inspires confidence. Their evidence is found to be impeccable and cogent. The evidence of P.W.-1 also inspires confidence. The evidence of the related witnesses is corroborated by the evidence of independent witnesses, which also includes the Gaon Burah and the V.D.P. member.

29) Although the accused was charged under Section 326 I.P.C., the injury detected on the victim was not found to be a grievous injury, despite the fact that the victim had permanent teeth marks on her cheek. The injuries described by the victim does not fall within the category of grievous hurt, which is specifically described under Section 320 I.P.C. So the accused is acquitted from the charges under Section 326 I.P.C. It is held that the accused on 26/03/2014, wrongfully restrained the victim and outraged her modesty. So the accused is held guilty of offence under Section 341 I.P.C. The accused is also held guilty of offence under Section 8 of the POCSO Act. The accused acted in a very aggressive manner. The prosecution could prove beyond

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reasonable doubt that the accused committed sexual assault on the victim and groping her chest and biting her cheek. The accused pinned her to the ground and sexually assaulted her with sexual intent.

HEARING ON THE POINT OF SENTENCE

30) I have heard the accused on the point of sentence. He has submitted that he has to take care of his family and he is the sole bread winner of the family.

31) I have considered the age and antecedent of accused. The accused had no earlier criminal antecedents. I believe that the accused deserves imprisonment for at least three years.

SENTENCE

32) The accused Sri Thaneswar Das is convicted under Section 341 I.P.C. and he is sentenced to rigorous imprisonment for one month. The accused Sri Thaneswar Das is further convicted under Section 8 of the POCSO Act and he is sentenced to rigorous imprisonment for three years and a fine of Rs.1,000/-, and in default of payment of fine, he will have to undergo rigorous imprisonment for one month.

33) The period of detention of the accused during investigation or trial is set off with his custodial sentence.

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34) The victim deserves compensation. So this case is recommended for compensation to the D.L.S.A.

35) Furnish a free copy of Judgment to the accused.

Judgment is signed, sealed and delivered in the open Court on the 3rd day of December, 2020.

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

A P P E N D I X**Sessions Case No.100(NL)2014.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Smti. Punyalata Das.
2. PW.2 - Sri Simanta Das.
3. PW.3 - Smti Nirumai Das.
4. PW.4 - Dr. Diganta Dutta, M/O of the case.
5. PW.5 - Sri Narayan Das.
6. PW.6 - Sri Tilak Das.
7. PW.7 - Sri Baba Das @ Lorakan.
8. PW.8 - Sri Chandra Kanta Medhi.
9. PW.9 - Sri Hemanta Bora.
10. PW.10- Sri Larakan Das @ Baba Das.
11. PW.11- Sri Narayan Tamuly, I/O of the case.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Statement
2. Ext.2 - F.I.R.
3. Ext.3 - Injury Certificate.
4. Ext.4 - Seizure List.
5. Ext.5 - Copy of G.D.E. No.1154 of 26/03/2014.
6. Ext.6 - Sketch Map.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

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

Transcribed and typed by :

Sri Satyabrata Kshattri, Stenographer.