

CAUSE TITLE

SPECIAL (POCSO) CASE NO.142/2018.

Informant : 'Y', the mother of the victim.

Accused : Md. Nurul Amin.
S/o Md. Asmot Ali.
Vill. Ahmedpur Block.
P.S. Bihpuria.
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.142/2018.

GR Case No.1198 of 2014.

State of Assam.

-versus-

Md. Nurul Amin.

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

Dates of evidence. : 28.04.2015, 10.08.2015, 21.12.2015,
09.12.2016, 21.09.2016, 29.03.2017,
08.08.2017 and 11.12.2017.

Date of argument. : 10.11.2020.

Date of Judgment. : 10.12.2020.

J U D G M E N T

1) The prosecution case in a narrow compass is that Md. Nurul Amin (here-in-after referred to as accused) has been having a love affair with the victim 'X', for the last seven months and he used to visit her frequently and committed penetrative sexual assault on her, and as a result, the victim 'X' was seven month pregnant. But, thereafter, the accused refrained from marrying her. An ejahar regarding this incident was lodged by the victim's

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mother 'Y', which was registered as Bihpuria P.S. Case No.207/2014 under Section 376 of the Indian Penal Code (IPC for short) RW Sec.4 of the Protection of Children from Sexual Offences Act, 1912 (POCSO Act for short).

2) The Investigating Officer (I.O. in short), who was entrusted with the investigation swung into action. He recorded the statements of the victim and the witnesses, forwarded the victim 'X' for medical examination. The victim was also forwarded to the Magistrate, who recorded her statements u/s 164 of the Code of Criminal Procedure (CrPC for short). The I.O. also prepared the sketch map of the place of occurrence. 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.

3) On appearance of the accused, 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.

4) To substantiate its stance, the prosecution adduced the evidence of Eight witnesses including the Medical Officer (M.O. in short) and the I.O., and exhibited various documents. The defence cross-examined the witnesses to refute the charges. The defence also adduced evidence of one witness, who was cross-examined by the prosecution.

Submissions :

5) The learned Special Public Prosecutor, Mr. Madhab Gogoi laid stress in his argument that this case is an open and shut case.

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6) On the contrary, the learned defence counsel, Mrs. M.D.G. Baruah laid stress in her argument that there was a delay of seven months in lodging the F.I.R. and the cause of delay was not mentioned. None of the witnesses examined had seen the accused visiting the victim's house. PW.6 rather saw some other men visiting the victim's house when she was alone in the house.

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 seven months from 24.06.2014, the accused committed rape on the minor victim X, who was only 13 years at that time?

ii) Whether the accused committed penetrative sexual assault on the victim 'X' ?

Decision thereon and the reasons for the decision :

EVIDENCE :

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

9) The victim was asked several questions in order to ascertain her intelligence. When this court found the victim was able to give rational answers, her evidence was recorded. PW.2, the victim stated that she was a student of class-VIII. The incident took place when she was in class-VII. When she was alone in her house, the accused went to her house and had sexual intercourse with her and thereafter, he had sexual

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intercourse with her for five days, and as a result, she conceived. When she was carrying for eight months, her mother, 'Y' learnt about the incident. The accused threatened her and forbade her from disclosing the incidents of sexual relationship and assured her that he would marry her. The victim 'X' stated that the accused removed her garments and he also undressed himself and committed sexual assault on her. But, subsequently, the accused did not marry her and she gave birth to a girl child. She was examined by a doctor and her statement was recorded by the Magistrate. Ext.1 is her statement and Ext.1(1), Ext.1(2) and 1(3) are her signatures.

10) PW.2 was cross-examined in extenso. She stated in her cross-examination that Ajgar, Hasen Ali, Nuru, Kalam and Afaj are her neighbours and they reside there with their families. On the date of occurrence, she did not attend school. A village meeting was convened relating to the incident, but she did not know who were present in the said meeting. She denied that her mother 'Y' stated that she did not know who committed the offence.

11) The informant 'Y' has testified as PW.1 that the victim 'X' is her daughter. The incident took place about a year ago. At the time of incident, she was not in her house as she went out for work. The victim was alone at home. The accused used to visit them as a plot of land, which belongs to his maternal uncle is situated near her house. She came to know about the incident when her victim daughter was eight months pregnant. When her younger sister asked the victim about her pregnancy, the victim stated that she was impregnated by the accused and he asked her not to disclose about the matter. Subsequently, the victim gave birth to a girl child. Initially, the accused promised to marry the victim X, but after the sexual assault, he refused to marry

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her. The victim was examined by the doctor and her statement was recorded by the Magistrate.

12) In her cross-examination, PW.1 stated that regarding the incident, a meeting was convened, and in that meeting, she did not notice the accused. She denied that her daughter was about 18 years old, at the time of the incident.

13) Dr. Banani Sarma testified as PW.3 that on 25.06.2014, she was serving as Medical & Health Officer-1 at North Lakhimpur Civil Hospital, and on that day at 1 pm, she examined the victim X on police requisition in connection with this case. The victim narrated a history of forceful sexual intercourse upon her by the accused and promise of marriage about eight months ago. She (M.O.) found the following :

“ a) Identification mark : Small black mole over right side of the neck.

b) Height & Weight : 4 feet 8 inch. 40 kg.

c) General configuration : good.

d) Teeth : 28 in no.

e) Breast : Developed.

f) i) Axillary hair : Present.

ii) Pubic hair : Present.

g) Private parts :

i) Vulva : Normal.

ii) Vagina : Normal, admits two fingers.

iii) Hymen : Absent.

iv) Uterus : Approximately 30 weeks size per abdomen.

h) Laboratory examination for spermatozoa detection : No spermatozoa seen.

i) Ossification test for age determination : Present age of the person concerned was above 17 years but below 18 years.

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14) The M.O. opined that examination of the victim does not reveal any evidence of recent forceful sexual intercourse. Her age at the time of examination was above 17 years but below 18 years. She was pregnant at the time of examination with approximately 32 weeks pregnancy duration." Ext.2 is the Medico legal report and Ext.2(1) is her signature.

15) Mustt. Rezia Khatun testified as PW.4 that the incident took place about one year ago. The victim is her first cousin. She was informed by the mother of the victim that the victim was suffering from ailment and her tummy was bulging, and on being asked, the victim denied her pregnancy. Subsequently, after urine examination, it was confirmed that the victim was pregnant. The victim told her that the accused is responsible for her pregnancy.

16) In her cross-examination, PW.4 stated that a village meeting regarding the matter was held, and in that meeting, the victim and her mother and some other persons were present. She denied that when the victim was interrogated in the meeting, she did not mention the name of the accused. The victim's mother used to go out for work and in her mother's absence, some men used to visit her. She never saw the accused visiting the victim's house.

17) Md. Inamul Islam has testified as PW.5 that the victim is his younger sister and the informant is his mother. He was not present in his house, at the time of the incident. The incident occurred about 1 1/2 years ago. At the time of the incident, the victim was a student of class-VII and she was about 14 years old. At the time of the incident, he was in Arunachal Pradesh and when he learnt about the incident from his mother, he came

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home from Arunachal Pradesh and his mother informed him that the accused committed rape on his sister. The victim also informed him that the accused committed sexual assault and impregnated her and she was seven months pregnant. His mother lodged an F.I.R. relating to the incident.

18) In his cross-examination, PW.5 denied that he mentioned his age as 26 years in his statement u/s 161 CrPC. He learnt about the incident, after returning from Arunachal Pradesh. A meeting was held in their house and he was present in the meeting regarding the incident. He denied that the victim was about 18 years old at the time of the incident. His sister used to stay in the house alone as his mother used to go out for work. He resides in Arunachal Pradesh. He denied that several men used to visit their house when the victim was alone at home.

19) Md. Hedaitul Islam has testified as PW.6 that the victim's mother informed him that the victim was pregnant and was carrying for seven months. Thereafter, they called a meeting in the victim's house. The Panchayat President, Afazuddin and about eight men were present. On being asked, the victim did not disclose anyone's name specifically.

20) In his cross-examination, PW.6 stated that he is the victim's maternal uncle. The victim disclosed the accused person's name as well as other names to her family members, and so, they could not come to a closure. He was informed about the incident by the victim's mother.

21) Md. Abdul Kalam has testified as PW.7 that he scribed the ejahar and after reading over the contents of the ejahar to the informant, he obtained her thumb impression on the ejahar.

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22) The I.O. SI Badirul Islam Mazumdar has testified as PW.8 that on 24.06.2014, he was serving as In-charge of Bangalmara Police Out Post, and on that day, an ejahar was lodged by the victim's mother, and accordingly, he registered GD entry No.377 dtd. 24.06.2014 and forwarded the ejahar to the O.C. of Bihpuria Police Station for registration of a case. He interrogated the accused and recorded the victim's statement in the Out Post. He sent the victim for medical examination and got the statement of the victim recorded by the Magistrate. He visited the place of occurrence, recorded the statements of witnesses and prepared the sketch map. Ext.4 is the sketch map and Ext.4(1) is his signature. The accused was arrested and forwarded to the court. He had collected the Medico legal Report and on closure of investigation, he submitted charge-sheet u/s 376 IPC RW Sec.4 of the POCSO Act against the accused. Ext. 5 is the charge-sheet and Ext.5(1) is his signature.

23) Md. Sahabuddin Ahmed has testified as DW.1 that about 3 /4 years ago, the victim X was pregnant, and a village meeting was held in the victim's courtyard. In the meeting, initially, the victim did not disclose anything about the incident, and when some women including the maternal aunt of 'X' persisted, the victim disclosed the name of seven boys, namely Zakir Hussain, Babuli Ali and others. The victim did not mention the accused person's name in the meeting.

ANALYSIS :

24) The evidence of PW.1 and PW.2 depicts that the accused committed penetrative sexual assault, but the victim did not disclose about the assault until her body started showing tell-tale signs. Her mother had confronted her and when her mother (PW.1) confronted her, she (PW.2) admitted that the accused

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sexually assaulted her and impregnated her. Initially, the victim told her aunt, Musstt. Rezia Khatun that the accused impregnated her. This fact has been stated by Rezia Khatun as PW.3. The evidence of PW.1 and PW.2 also depicts that the accused threatened the victim and exercised pressure on her not to disclose about her pregnancy. The evidence of the victim as PW.2 and her mother as PW.1 also depicts that the accused asked the victim not to disclose about her pregnancy by promising to marry her. However, the accused did not marry her.

25) The medical officer's evidence clearly reveals that at the time of examination of the victim, she was pregnant. The medical officer testified as PW.3 that the victim was carrying 30 weeks pregnancy and the present age of the victim was above 17 years, but below 18 years. The cross-examination of PW.1, PW.2, PW.4, PW.5, PW.6 and DW.1 depicts that a meeting was held in the victim's house after it was discovered that the victim was pregnant. PW.4, PW.5 and PW.6 testified that the victim was present in the meeting, while on the contrary, the victim herself testified in her cross-examination that she was not present in the meeting. PW.5 insisted that the victim was not present in the meeting, while PW.4 testified in cross-examination that the victim did not disclose the accused person's name as the perpetrator, who impregnated her. PW.4's cross-examination depicts that the victim did not mention the accused person's name. It is apt to mention at this juncture that PW.4 is X's cousin. PW.6 testified in his cross-examination that the victim mentioned the accused person's name as well as names of several other men when she was asked by the members of the meeting about the person, who impregnated her.

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26) Through the cross-examination of the I.O., who testified as PW.8, the only contradiction that could be culled out was that PW.5 has given his age as 26 years in his statement u/s 161 CrPC. Although, no contradiction could be elicited through the cross-examination of the witnesses and through the cross-examination of the I.O., as per Section 145 of the Indian Evidence Act, 1872 (Evidence Act in short), yet there are too many contradictions apparent in the evidence. The evidence in chief of the witnesses and the cross-examination of the witnesses depicts too many contradictions to rope in the accused person as guilty of offence u/s 376 IPC or Section 4 of the POCSO Act. Moreover, the medical officer's evidence depicts that 'X' was above 17 years, but below 18 years. In this case, two years on the higher side of the radiological age of the victim is taken into consideration. When two years on the higher side of the radiological age is taken into consideration, the victim happens to be a major. Her conduct depicts that she had allegedly consensual sexual relationship with the accused person. This is the reason why she did not disclose about her pregnancy until her protruding belly was noticed by her mother, and she had to come out with the truth. PW.1 also did not mention in her evidence that the victim identified the accused in the meeting. PW.2 and PW.5 testified that PW.2 was not present in the meeting. PW.4 testified that the victim did not mention the accused person's name in the meeting as the perpetrator. PW.6 testified that the victim also mentioned the names of other boys as well as the accused as the perpetrator of the crime.

27) Md. Sahabuddin Ahmed testified as DW.1 that the victim disclosed the names of seven boys including Jakir Hussain, Babuli Ali as well as other boys in the meeting. The victim named these boys as the perpetrators, who impregnated her. It is evident from

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the testimony of DW.1 that the victim did not mention the accused person's name.

28) The evidence of all the witnesses casts a shadow of doubt over the veracity of the victim's evidence. The prosecution failed to prove beyond a reasonable doubt that the accused is responsible for cheating the victim with promise of marriage and inducing her into having a sexual relationship with him. The prosecution also failed to prove beyond reasonable doubt that accused committed penetrative sexual assault on the victim. The evidence of PW.1, PW.2 and PW.5 clearly depicts that PW.1 goes out for work and the victim remains alone at home. PW.5 also works in Arunachal Pradesh. The evidence of PW.2 also depicts that the accused had sexual intercourse with her not only once, but also for five days or even more. It is not possible for a person to repeatedly assault a girl for a week or so, without being caught. The cross-examination of PW.2 depicts that the houses of Azgar, Hasen, Nuru, Kalam and Afaz are situated near their house. It is not possible that a person can sexually assault a girl for a week within a thickly populated neighbourhood.

29) The PW.8 has marked the sketch map as Ext.4. I have carefully perused the sketch map, Ext.4. The neighbourhood was not depicted in the sketch map. The sketch map prepared by PW.8 is not similar to the area described by PW.2.

30) Due to the discrepancies referred to in my foregoing discussions, it is held that the prosecution failed beyond a reasonable doubt that the accused cheated the victim or forcefully committed penetrative sexual assault on her or committed rape on the victim, who is a minor, without her consent. The evidence of 'X' does not inspire confidence.

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31) The accused is, therefore, acquitted from the charge u/s 376 IPC and the charge u/s 4 of the POCSO Act, on benefit of doubt, and he is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 10th day of December, 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.

A P P E N D I X

Special (POCSO) Case No.2/ 2015.

LIST OF WITNESSES FOR PROSECUTION :

1. PW.1 - 'Y', the mother of the victim.
2. PW.2 - Victim, 'X'.
3. PW.3 - Dr. Banani Sarma, M.O.
4. PW.4 - Mustt. Rejia Khtun.
5. PW.5 - Md. Inamul Islam.
6. PW.6 - Md. Hedaitul Islam.
7. PW.7 - Abdul Kalam.
8. PW.8 - SI Badirul Islam Mazumdar, I.O.

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Statement of the victim.
2. Ext.2 - Medico legal report.
3. Ext.3 - Ejahar.
4. Ext.4 - Sketch map.
5. Ext.5 - Charge-sheet.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

DW.1 - Md. Sahabuddin Ahmed.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

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

Transcribed and typed by :
Sri Satyabrata Kshatry, Stenographer.