

CAUSE TITLE

Special (POCSO Act) Case No.67/2018.

Informant : 'Y'

Accused : Sri Manjil Barhoi.

ADVOCATES :

For the State : Mr M. Gogoi, learned Spl. Public Prosecutor.

For the Defence : Mr D. Borah, learned 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 Act) Case No. 67/2018.
GR Case No.1071/2018

State of Assam.

-versus-

Sri Manjil Barhoi.

Charges : Under Section 448 IPC RW Section 4/18 of the POCSO Act.

Date of evidence. : 12/04/2019, 26/08/2019, 11/11/2019 and
28/01/2021.

Date of argument. : 15/03/2021.

Date of Judgment. : 15/03/2021.

J U D G M E N T

1) The prosecution case in a nutshell is that on 07/05/2018, at about 4.30 PM, Sri Manjil Barhoi (hereinafter the accused person) criminally trespassed into the victim's house when she was alone at home and he committed sexual assault on the victim by kissing her forcefully and touching her private parts. He tried to commit penetrative sexual assault on her by pinning the victim down to the bed and removing her garments. The minor victim was however saved by her cousin.

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2) An ejahar regarding this incident was lodged by the victim's father 'Y', which was registered as Bihpuria PS Case No.240/2018 under Sections 448/376/511 of the Indian Penal Code (IPC for short) Read With Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

3) The Investigating Officer (I/O in short) embarked upon the investigation. He forwarded the victim to the Magistrate who recorded her statement under Section 164 of the Code of Criminal Procedure (CrPC for short). The victim was also forwarded for medical examination. The I/O went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses. On finding prima facie materials, the I/O submitted charge-sheet against the accused person under Section 448/376/511 IPC Read With Section 4 POCSO Act.

4) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 448 IPC Read With Section 4/18 POCSO Act was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) To substantiate its stance, the prosecution adduced the evidence of nine witnesses and exhibited several documents. The defence did not cross-examine the witnesses as there were no incriminating evidence against the accused. PW-1 and PW-2 however were cross-examined.

POINTS FOR DETERMINATION :

6) On the backdrop of the rival contentions urged at the bar, the following points are apposite for a judicious decision:-

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i) Whether on 07/05/2018, at about 4 pm, the accused committed house trespass by entering into the victim's house, with intent to commit penetrative sexual assault on the victim who was a minor?

ii) Whether at the same time and place, the accused attempted to commit penetrative sexual assault on the victim 'X'?

DECISION THEREON AND THE REASONS FOR THE DECISION :

7) The victim 'X' testified as PW.-1 that the accused is known to her. He was a teacher of an L.P. School near their house. The incident occurred about a year ago. On the day of the incident, the accused was passing by their house when she called him into their house. Then the accused came to their house and took his seat and she offered him tea. While she was chatting with the accused, her brother-in-law Rahul Tayung came and verbally abused her for talking with the accused person. On hearing her brother-in-law's raised voice, her neighbours gathered. Meanwhile, her father also arrived. Her father was instigated by the villagers and the people assembled in her house. Her father then lodged the ejahar. The accused did not commit any sexual assault on her. She was also taken to the doctor. Ext.1 is her statement under Section 164 CrPC, which was recorded before the Magistrate and Ext.1(1), 1(2), 1(3), 1(4), 1(5) and 1(6) are her signatures. In her cross-examination, the victim testified that she gave her statement before the Magistrate on the narrative of the villagers.

8) When the evidence of the prosecutrix does not implicate that the accused is complicit, the entire case is without a substratum.

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The evidence of the prosecutrix depicts that she gave her statement under Section 164 CrPC according to the narrative of the local villagers. Her evidence also depicts that the accused did not commit any sexual assault. She was only chatting with the accused. Her evidence belies her statement under Section 164 CrPC, which is according to the narrative of the villagers, who exercised pressure to give her statement under Section 164 CrPC. Her evidence as well as her father's evidence clearly depicts that the accused did not commit sexual assault on the victim 'X'.

9) The victim's father 'Y' testified as PW-2 that the accused was working as an L.P. School teacher near his house. The incident occurred about a year ago. On the date of the incident, he went to Dhunaguri market. At about 4/4.30 PM, he returned home and he saw many people assembled in his house. He also noticed the accused Manjil Barhoi in the crowd. Then the people who assembled in his house asked him to lodge a case against the accused as the accused committed rape on his daughter. Then on being pressurized, he lodged a case against the accused. He did not write the FIR. He affixed his signature on the FIR, but he did not know what is written in the FIR. Thereafter his daughter 'X' stated that the accused did not commit any sexual assault on her. She informed him that as the accused was passing through their house, his daughter called him and offered him tea. Meanwhile, Rahul Tayung came and started to hurl abuses at his daughter and when their neighbours heard the commotion, they assembled in his house. Ext.2 is the FIR and Ext.2(1) is his signature. In his cross-examination, he testified that he lodged the case as he was pressurized by the local villagers. Thus the evidence of the informant also does not at all implicate that the accused is complicit. His evidence depicts that he was

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pressurized by the local villagers to launch this case against the accused. His daughter informed him that while the accused was passing by his house, she called him and offered him tea, Rahul Tayung made a mountain out of a mole hill.

10) Similarly, Sri Biswajit Deori testified as PW-3 that he knows the accused because the accused was a teacher in an L.P. School. The accused person's house is not known to him. The incident occurred about a year ago. At that time, he, along with Chandreswar Deori and 4/5 other men came from Bihpuria towards their house at Bahgorah Deorigaon village. At that time, Sri Chandreswar Deori stated that a rape had been committed near the RCC bridge of their village in 'Y's' house. Then he, along with Chandreswar Deori went to 'Y's' house, but did not find anybody in 'Y's' house. Then a nearby woman informed him that 'Y' informed her that the accused was taken to the Gaonburah's house. Then he (PW-3), along with Chandreswar Deori went to the Gaonburah's house. He noticed many people assembled in the Gaonburah's house and the accused person had been detained in the house. Then he heard from the people assembled that the accused committed rape on the minor daughter of 'Y'. He did not know the name of 'Y's' daughter. Thereafter the police came and took the accused Manjil Barhoi along with them. In his cross-examination, he testified that the police did not record his statement.

11) The evidence of Sri Biswajit Deori (PW-3) can be considered as hearsay evidence. He heard that the accused was taken to the Gaonburah's house from a neighbour. Thereafter PW-3 heard from the people assembled in the Gaonburah's house that the accused committed rape on 'Y's' daughter 'X'. PW-3 did not name

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any person who informed him about the incident of rape. Moreover, the victim 'X' and the informant 'Y' themselves did not mention that the accused committed rape on the victim 'X'.

12) Sri Kamal Narayan Deori testified as PW-4 that the accused Manjil Barhoi is known to him because he was a teacher at Mornoi Deori Govt. L.P. School. The informant 'Y' and the victim 'X' are not known to him. The incident occurrence about a year ago. At that time, he was in his house and he heard from the local people that there was an offence of rape near the RCC bridge. He did not know who committed rape on whom. He came to know from the local people that the accused committed rape on the minor daughter of 'Y'. Chandracharan Deori informed him about the incident. It is apt to mention at this juncture that the evidence of PW-4 depicts that Chandracharan Deori passed away and this Chandracharan Deori informed him about the incident. Thus the evidence of PW-4 can be considered as hearsay evidence.

13) Sri Phulendra Deori testified as PW-5 that the accused person was a teacher of Mornoi Deori Govt. L.P. School. The informant 'Y's' house is about ½ a kilometer away from his (PW-5) house. The incident occurred about a year back. On that day, he was in his house and he heard that the local people gathered by the side of RCC bridge near 'Y's' house. He did not go near 'Y's' house. He came to know from the people who had gathered in 'Y's' house about an incident relating to 'Y's' daughter. He did not know about the incident. In view of my foregoing discussions, it can be held that there is no evidence that the accused person is complicit. The victim and informant themselves did not implicate that the accused trespassed into the victim's house or commit rape on her. The evidence of PW-3 and PW-4 are hearsay evidence and PW-5 denied any knowledge about the incident.

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14) Similarly, Sri Rahul Tayung testified as PW-6 that he did not know what case has been lodged by 'Y' against the accused. Sri Basudev Deori testified as PW-7 that he did not know anything regarding the incident. 'Z' testified as PW-8 that the incident occurred in the year 2018. On the date of the incident, she was not in the her house as she had gone out for work. She did not know anything regarding the incident.

15) It is apt to mention at this juncture that 'Z' is PW-1's mother and PW-2's wife. She further testified that her daughter 'X' did not mention anything about any incident. Her husband 'Y' also did not mention anything about any incident.

16) After carefully scrutinizing the evidence of PW-1, PW-2 and PW-8, it can be safely held that the parents and the victim did not mention that the accused committed or attempted to commit rape on the victim 'X'. Their evidence is contrary to the contents of the FIR or to the statement of the victim under Section 164 CrPC. Thus the benefit of doubt goes to the accused. The Lat Gaonburah Sri Raghunath Tayung testified as PW-9 that the accused person is known to him. The incident occurred about 2 years ago. He did not know anything about the incident. The informant 'Y' brought his daughter 'X' and the accused and handed them over to him. As he was the Gaonburah, he called the police and handed over the victim to the police. He did not know anything about the incident.

17) It can be safely held that PW-9 too tried to shield the accused and screen him from punishment. The evidence of PW-1, PW-2 and PW-8 as well as the evidence of Lat Gaonburah as PW-9 does not at all implicate that the accused committed house trespass in the victim's house and attempted to commit rape on the victim

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'X'. The prosecution failed to prove beyond a reasonable doubt that the accused committed house trespass or attempted to commit rape. Thereby, the accused Manjil Barhoi is acquitted from the charges under Section 448 IPC Read With Section 4/18 POCSO Act, on benefit of doubt, and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 15th day of March, 2021.

(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 Act) Case No.67/2018.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW-1 - 'X'.
2. PW-2 - 'Y'.
3. PW-3 - Sri Biswajit Deori.
4. PW-4 - Sri Kamal Nayan Deori.
5. PW-5 - Sri Phulendra Deori.
6. PW-6 - Sri Rahul Tayung.
7. PW-7 - Sri Basudev Deori.
8. PW-8 - Smt Birmoni Kaman.
9. PW-9 - Sri Raghunath Tayung.

LIST OF COURT WITNESSES :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Statement of the victim 'X' under Section 164 CrPC.
2. Ext.2 - Ejahar.

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.