

CAUSE TITLE**Special (POCSO) Case No.16/2016.**

Informant : Smt Karishma Bora.

Accused : Sri Janmoni Bora.

ADVOCATES :

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

For the Defence : Mrs. Geetanjali Mahanta, 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) Case No.16/2016.
GR Case No.409/2016

State of Assam.

-versus-

Sri Janmoni Bora.

Charges : Under Section 336/447 IPC RW Sec.8 of the POCSO Act.

Date of evidence. : 26.09.2016, 03.04.2017 and 14.08.2017.

Date of argument. : 05.02.2021.

Date of Judgment. : 15.03.2021.

J U D G M E N T

1) The prosecution case, in brief, is that on 21.02.2016 at about 7 pm, the prosecutrix 'X' was at home. Her mother and brother were watching a movie in their mobile phone, while her father was not at home. At that time, she noticed stones being pelted on their roof, and the ropes binding their bamboo walls were being cut. At that time, her mother went out to find out who were responsible for the misdeed. At that time, a person came and grabbed her and pulled her, but she somehow managed to escape. Her mother tried to assault the miscreants with a 'lathi' and then the person, who assaulted her, fled along with his companions.

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2) An ejahar regarding this incident was lodged by the prosecutrix 'X', and a Panigaon PS Case No.16/ 2016 u/s 336/ 447 of the Indian Penal Code, 1860 (IPC for short) RW Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short), was registered.

3) SI Debananda Mahanta was endorsed with the investigation. The Investigating Officer (I.O. in short) embarked upon the investigation. He recorded the statements of the witnesses and prepared the sketch map of the place of occurrence. The victim was forwarded for medical examination. On finding prima facie case, the I.O. submitted charge-sheet against Sri Janmoni Bora (hereinafter the accused) u/s 336/ 447 IPC RW Section 8 POCSO Act.

4) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge u/s 336/ 447 IPC RW Section 8 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 the evidence of 4 (four) witnesses, and the accused cross-examined the witnesses to refute the charges.

POINTS FOR DETERMINATION :

6) On the backdrop of the rival contentions, the following points are apposite for proper adjudication of this case :

i) Whether on 21.01.2016, at about 7 pm, the accused pelted stones on the roof and wall of the victim's house?

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ii) Whether at the same time and place, the accused committed criminal trespass by entering into the victim's house with intent to commit an offence?

iii) Whether at the same time and place, the accused committed sexual assault on the victim 'X'?

SUBMISSIONS

7) The learned Spl. P.P., Mr. Madhab Gogoi, laid stress in his argument that the accused deserves exemplary punishment. On the contrary, the learned defence counsel, Mrs. Geetanjali Mahanta laid stress in her argument that the victim's evidence does not inspire confidence, due to the contradictions galore. Animosity between both the parties has been admitted. The victim's father was sentenced to imprisonment in a criminal case. The sole independent witness denied any knowledge about the incident. The I.O. did not enlist any independent witness examined by him and adverse inference can be drawn u/s 114(g) of the Indian Evidence Act, 1872 (Evidence Act for short). The learned defence counsel has submitted that the accused gets the benefit of doubt if a view in his favour is adopted.

DECISION THEREON AND THE REASONS FOR THE DECISION :

8) To decide this case in its proper perspective, it is necessary to delve into the evidence. The victim 'X' testified as PW.1 that the incident occurred in the ongoing year. She could not recollect the date of the incident. She further testified that she was 17 years old at the time of the incident. At the time of the incident, her

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father was not at home and her mother was inside the house. At about 7.30 pm, she was studying and her mother was talking with her aunt over phone. She heard stones being pelted over the roof of their house. Then, she along with her mother went out of their house and saw the accused near their door. Then the accused grabbed her and when her mother went to bring a stick, the accused and his companions fled away from their house. She could not recognize the miscreants, who accompanied the accused. She could recognize only the accused. She lodged an ejahar on the following day. Ext.1 is the ejahar, wherein Ext.1(1) is her signature. A careful scrutiny of her evidence depicts that PW.1's F.I.R. (Ext.1) belies her testimony. Her F.I.R. depicts that she could not recognize the accused at night, while on the contrary, she testified as PW.1 that she could recognize only the accused and she failed to recognize the other miscreants. In her F.I.R., it is mentioned that her mother was watching a movie along with her brother in the mobile phone, while the victim testified as PW.1 that her mother was chatting with her aunt over phone.

9) The other contradiction highlighted by the defence has been affirmed by the I.O. SI Debananda Mahanta testified as PW.4 that the victim did not mention u/s 161 CrPC that at the time of the incident, she was reading a book in her room, and then she heard the sound of stones being pelted over the roof and walls of their house, and then she went out from her house. This is a major contradiction and this casts a shadow of doubt over the veracity of the victim's evidence. An acrimonious relationship between both the parties has been projected by the defence.

10) The victim's mother, 'Y' testified as PW.2 that the accused is

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her brother-in-law and the victim (PW.1) is her daughter, who was 17 years old. The incident occurred in the Assamese month of 'Fagun'. At that time, her husband was not present in their house. She along with her two sons and one daughter (PW.1) were in the house. She was busy on her phone, when suddenly her daughter (PW.1) went out from the house and informed her that she heard noise of stones being pelted over the roof of their house. Then, they raised alarm. They came out with a torch light and saw the accused. The accused person suddenly grabbed her daughter (PW.1). She went to bring a stick, and then the accused fled away, and she informed the matter to the O.C. of Panigaon P.S. over phone. The police came to their house. Her daughter (PW.1) lodged an ejarah with the police at Panigaon P.S. About 1 ½ months back, her husband had assaulted Ramen Bora and a case has been lodged against her husband in connection with this case.

11) The PW.2 has admitted that they had an acrimonious relationship with the accused due to a land dispute. Her husband assaulted his brother, Ramen Bora and has been appearing in the case of assault. The accused and his other brother, Ramen Bora's relationship is good.

12) It can be deciphered with the evidence of PW.1 and PW.2 that the accused and his other brother, Ramen Bora has an agreeable relationship while the accused had a strained relationship with his brothers. PW.1 and PW.2 have admitted that Baba Bora is her father and there was a fight between Baba Bora and Ramen Bora. A family feud between both the parties cannot be ruled out. Moreover, PW.1 did not mention that her mother was carrying a torch and she could see the accused with the help of the torch

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light. The Gaonburah's evidence does not implicate that the accused is complicit. PW-2 appears to be eager to nail the accused. She has added that she was carrying a torch, in her enthusiasm to incriminate the accused.

13) Sri Gulap Das is the Gaonburah. PW.2's evidence depicts that the Gaonburah advised them to lodge this case against the accused. The Gaonburah, Gulap Das testified as PW.3 that the accused is known to him. He did not know anything about the incident, which took place about a year back, one night at about 8 pm. The police of Panigaon P.S. informed him over phone about an incident which occurred in Baba Bora's house. The police asked him to go to the place to find out about the incident. Baba Bora's house is near the accused person's house. He, then, informed the police that he did not hear any commotion.

14) This witness was declared as a hostile witness. He denied that he stated before the I.O. that at the time of the incident, *"Baba Bora was not in his house as he remained away from his house, being an accused of an offence in commission of injuries to his mother and brother by inflicting 'dao' blows and in his house, his wife and children were present and when I asked them, I came to know that the accused rebuked PW.1 and PW.2 with filthy language."* His cross-examination by the prosecution, however, was not affirmed by the prosecution on the examination of the I.O. (PW-4).

15) The I.O. is a formal witness. His evidence as PW-4 depicts that on being endorsed with the investigation, he swung into action. He forwarded the victim girl for medical examination. She

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was also forwarded to the Magistrate who recorded her statement u/s 164 CrPC. On finding a prima facie case, he submitted charge-sheet against the accused u/s 366/447 IPC RW Section 8 of the POCSO Act. Ext.4 is the sketch map and Ext.4(1) is his signature thereon. Ext.3 is the charge-sheet and Ext.3(1) is his signature. Ext.1 is the F.I.R. and Ext.1(2) is the signature of the O/C, Sri Utpal Sarmah, with which he is acquainted.

16) It has already been held in my foregoing discussions that the contradictions which are apparent in the evidence extends a benefit of doubt to the accused. The view which favours the accused is taken. The accused is given a benefit of doubt. It is, thereby, held that the prosecution failed to prove beyond reasonable doubt that the accused is the miscreant who pelted stones, and committed criminal trespass into the victim's house in order to commit an offence of sexual assault on the victim. The prosecution also failed to prove beyond reasonable doubt that the accused is the person who committed sexual assault on the victim, on 21/02/2016, at about 7 PM. The prosecution also failed to prove beyond reasonable doubt that the accused committed mischief by pelting stones on the victim's roof. There is no evidence that the accused cut the ropes binding the thatched wall.

17) The accused Janmoni Bora is thereby, acquitted from the charges u/s 336/447 IPC, on benefit of doubt. He is also acquitted from the charges u/s 8 of the POCSO Act, on benefit of doubt, and he is set at liberty forthwith.

18) It appears that the victim does not deserve compensation. So this case is not recommended for compensation.

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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) Case No.16/2016.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - X.
2. PW.2 - Y.
3. PW.3 - Sri Golap Das.
4. PW.4 - I/O of the case.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Ejahar.
2. Ext.2 - Medical Examination Report.
3. Ext.3 - Charge-sheet.
4. Ext.4 - Sketch Map.

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 Kshatry, Stenographer.