

IN THE COURT OF SPECIAL JUDGE (POCSO)
NALBARI

SPL. (P) CASE NO. 12/2018

U/s 8 Protection of Children from Sexual Offences Act, 2012

r/w 376 (2) (i)/ 511 Indian Penal Code

State of Assam

- Vs -

Achyut Barman

..... Accused

Present

Smti Munmun B.Sarma

Special Judge (POCSO),

Nalbari

Counsel for Prosecution : Mr.K.K.Sarma, Special Public Prosecutor

Counsel for Defence : Sri Jayanta Kalita, Advocate

Evidence : 07/11/2019

Argument : 09/06/2020

Judgment : 20/06/2020

JUDGMENT

1) On 22/04/2017 informant Gitika Baishya lodged an ejarah before the O/C, Nalbari Sadar P.S., stating inter alia that, on the same day at 11-30 AM one Achyut Barman, who was working in the Post Office of Teresia, went to give a letter in her house. Taking advantage of nobody being present in the house, the accused trespassed in to the house and

dragged her daughter victim 'X' (14 years) and gagged her mouth and tried to rape her. When local people came hearing victim's hue and cry, the accused fled. Hence, this present case.

2) On receipt of the FIR police registered a case as Nalbari PS Case No. 263/17 u/s 376/511 IPC r/w s.8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act). The police went to the place of occurrence and examined the available witnesses. Statements of the witnesses were recorded and her statement u/s 164 CrPC was duly recorded. On completion of investigation, a prima facie case having appeared against the accused, the IO submitted charge sheet against accused Achyut Barman u/s 376/511 IPC r/w s.8 POCSO Act.

3) Cognizance was taken u/s 376/511 IPC r/w s.8 POCSO Act and the accused Achyut Barman appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on Case Record and Case Diary and prima facie case having appeared u/s 376/511 IPC r/w s.8 POCSO Act, charges were framed and the content of the offences were read over and explained to the accused Achyut Barman, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 376/511 IPC r/w s.8 POCSO Act against the accused person, the prosecution side examined 2 (Two) witnesses & exhibited 3 documents. To substantiate his claim, defence did not examine any witness. The accused person's case, as could be ascertained from cross-examination of the prosecution witness was that of total denial.

- 5) The **points for determination** are –
- a) Whether on 22/04/2017 at about 11:30 AM, the accused attempted to commit rape upon victim 'X', aged 14 years?
 - b) Whether the accused on the same date, time and place committed sexual assault upon the victim, aged 14 years?

DISCUSSIONS, DECISIONS & REASONS THEREOF –

6) I heard the arguments forwarded by the Ld. Special Public Prosecutor and Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. Considering the limited evidence available on record, the charge u/s 376/511 IPC r/w s.8 POCSO Act are discussed together herein below, without losing their individuality.

7) **To be convicted u/s 376/511 IPC it must be proved** that the accused Achyut Barman attempted to commit rape on the victim. On the other hand, **To be convicted u/s 8 POCSO Act it must be proved** that the accused Achyut Barman committed sexual assault upon the victim, aged 14 years. **S.7 POCSO Act defines 'sexual assault'** as follows –

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves

physical contact without penetration is said to commit sexual assault."

8) Keeping the above parameters in mind, the evidences of the witnesses and documentary evidences are analyzed. The **victim 'X'** **deposed as PW2** and the **informant deposed as PW1**. Both of them stated that the victim was at home with her brother and another village girl when the accused, being a postman, came to deliver a policy. He touched the victim's head and out of fear the victim rushed to the courtyard and screamed. PW1/informant was returning home and hearing PW2's scream she immediately went to the thana & lodged the case without asking the victim what happened. Later PW1 came to know that no bad thing happened.

9) Thus, what appears from the evidence is that neither the informant nor the victim supported the prosecution case. No material appeared against the accused u/s 376/511 IPC r/w s.8 POCSO Act and prosecution failed to prove the case against him beyond all reasonable doubt..

ORDER

10) Thus, in view of the discussions made in the prior paragraphs it is held that the accused is not guilty u/s 376/511 IPC r/w s.8 POCSO Act. **Accused Achyut Barman is acquitted on benefit of doubt and set at liberty.** Bail bond is cancelled and the bailor discharged.

Zimma, if any, is made absolute.

A copy of the judgment be forwarded to the learned District Magistrate, Nalbari, as provided u/s 365 CrPC.

Let the case record be consigned to record room after completing the formalities.

Given under my hand and seal of this Court on this the **23rd day of June'2020.**

(Smti Munmun B.Sarma)

Special Judge (POCSO),
Nalbari

APPENDIX

(A) **Prosecution Witnesses:**

- a) PW1 – Smti Gitika Baishya (Informant)
- b) PW2 – 'X' (Victim)

(B) **Prosecution Exhibits:**

- a) Ext.1 – FIR
- b) Ext.1 (1) – Signature of PW1 Smti Gitika Baishya (Informant)
- c) Ext.2 – School Certificate
- d) Ext.2 (1) – Signature of PW1 Smti Gitika Baishya (Informant)
- e) Ext.2 (2) – Signature of PW2 'X' (Victim)
- f) Ext.3 – Statement u/s 164 CrPC of Victim/PW2
- g) Ext.3(1) & (2) - Signatures of PW-2 (Victim)

(C) **Defence Witnesses** : None.

(D) **Defence Exhibits** : None.

(Smti Munmun B.Sarma)

Special Judge (POCSO),

Nalbari