

GAHC010287102018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/120/2018

SUMON BHUMIZ
HAILAKANDI.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

2:SRI JITUL BORAH
S/O-KHAGEN BORAH
DISTRICT CHILD PROTECTION OFFICER
HAILAKANDI
O/O-DCPO
OLD HOSPITAL ROAD
P.S.-HAILAKANDI
DIST. HAILAKANDI
ASSA

For the Appellant : **Ms. Purnima Baruah Bordoloi, Amicus Curiae.**

For the Respondents: Mr. M. Phukan, APP, Assam

BEFORE

THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MR. JUSTICE MIR ALFAZ ALI

Date of hearing : 30/03/2021.
Date of judgement : 30/03/2021

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

1. Heard Ms. Purnima Baruah Bordoloi, learned Amicus Curiae, appearing for the appellant. We have also heard Mr. M. Phukan, learned APP, Assam, appearing for the State/respondent No.1. None has appeared for the informant.
2. This appeal from jail, is directed against the judgement and order dated 20/09/2018 passed by the learned Special Judge, Hailakandi in Special (POCSO) Case No. 11/2017 whereby, the sole appellant had been convicted under section 6 of the POCSO Act, 1012 and sentenced to undergo rigorous imprisonment for 14 (fourteen) years and also to pay fine of Rs. 5,000/-, in default, to undergo rigorous imprisonment for further 2(two) months.
3. This is yet another shocking instance of sexual harassment of a minor girl wherein a complaint has been made by the mother of the victim that the father of the child had committed rape on his minor daughter.
4. On 30/08/2017, the mother of the victim girl i.e. the PW-1 had lodged a complaint before the District Child Protection Officer (DCPO), Hailakandi, reporting about sexual assault made by her husband upon her minor daughter, aged about 11 years. In the complaint dated 30/08/2017, it had been inter-alia mentioned, that such activities were being indulged by her husband upon her daughter every night since past one month or so when the family members went to sleep. On 22/08/2017, her husband had returned home late at night and when all of them including her three daughters and one son had fallen asleep, the second daughter screamed and asked for help. After lighting the lamp, she found her minor daughter without clothes and the zip of the pant of her husband was opened. Her daughter had screamed and said that her father was upon her body, who put his private part into her private part. On the next morning, the victim complained of bleeding and severe stomach pain which was indicative of penetrative assault. In the complaint lodged by the mother of the victim, it was further mentioned that prior to that, the complainant could not sleep for 2-3 nights so as to keep any eye on the accused. But on 26th August, 2017, she had fallen asleep having spent a number of sleepless nights, when the accused had again attempted rape on her minor daughter, who could not scream because her father had tied her hands strongly.

But her daughter had signaled her with her legs and then she (complainant) woke up and found him on top, without clothes, having sex with her minor daughter.

5. The complaint dated 30/08/2017 was forwarded by the DCPO, Hailakandi to the Police, based on which, Hailakandi P.S. case No. 536/2017 was registered under section 4 of the POCSO Act, 2012 and the matter was taken up for investigation. Upon completion of investigation, the IO had submitted charge sheet against the accused/appellant. Accordingly, charge was framed against the appellant under Section 6 of the POCSO Act, 2012. Since the appellant had pleaded innocence and claimed to be tried, the matter went up for trial. Eventually, by the impugned judgement and order dated 20/09/2018, the appellant was convicted and sentenced as indicated above.

6. By referring to the impugned order dated 20/09/2018, Ms. Bordoloi, learned Amicus Curiae submits that she is not arguing for acquittal of the appellant but merely seeks lessening of the jail sentence by adopting a sympathetic approach towards the appellant since he has a family to look after.

7. We find from the record that the mother of the victim Smt. Shanti Bhumiz, who is also the complainant in this case, was examined as PW-1. PW-1 has deposed that she has five children. At the relevant time, her eldest daughter was at Karimganj and the second daughter (victim) was aged about 10(ten) years. On the night of the incident, she was sleeping with her four children in one bed and her husband was sleeping in another bed. At that time, she heard cry of her second child (victim). She woke up and saw her husband in a naked condition and the frock of the child (victim) was pulled upward and the accused was committing sexual intercourse with her minor child. Then, she assaulted the accused and somehow managed to push him away. The accused wanted to assault her with a spade and thereafter, he went out by breaking open the door. PW-1 has also stated that her daughter had reported to her that the accused used to do the same "act" with her since before. She then came to Hailakandi town and informed the matter to the concerned office. PW-1 has proved her signature in the complaint dated 30/08/2017 (Ext. 1). During her cross examination, the PW-1 has stated that the victim was bleeding through her vagina and although she had informed the Police about the same, the Police did not seize any blood stained cloths. It has also been stated by the PW-1 that her eldest daughter, who is presently living at Karimganj, was also victimized in the same manner by the accused.

8. PW-2 Sri Jitul Bora, who was the District Child Protection Officer (DCPO), Hailakandi was examined as PW-2. This witness has confirmed that he had received a written complaint from the PW-1 informing about sexual assault on her minor daughter by her husband. He then forwarded the complaint to the Officer-in-Charge, Hailakandi Police Station for legal action. PW-2 has also proved his signature Ext. 2(1) in the FIR and has stated that the Police has recorded his statement.

9. The victim girl was examined as PW-3. Before recording her statement, the learned Special Judge, Hailakandi had asked a few usual questions to the child witness so as to test, as to whether the minor girl was able to give logical answers to the queries put to her. On being satisfied as regards the state of mind of the witness, her deposition was recorded. In her deposition, the PW-3 had given a version, which was consistent with the complaint dated 30/08/2017 (Ext.1) and has confirmed that her father did "bad things" with her which had led to bleeding in her vagina. Her mother woke up from sleep at night and kicked her father and thereafter, the case was lodged.

10. PW-4 Smt. Saraswati Goswami is a social worker in the District Child Protection Unit, Hailakandi and she has deposed that on 30/08/2017, the complainant came to their office and reported about the rape committed on her minor daughter by her husband. Accordingly, Ms. Rajashree Roy Deb (PW-6) had prepared a complaint as per the version of the complainant, in her presence and later, the DCPO Sri Jitul Bora had forwarded the said complaint to the Officer-in-Charge, Hailakandi Police Station. This witness has also confirmed that on being entrusted by the DCPO, she had conducted social investigation over the matter and the Police had recorded her statement.

11. PW-5 Smt. Krishnamoni Dutta was a Women Police Constable, who was attached to the Hailakandi Police Station on that day. PW-5 has deposed that on the date of the incident, she along with Deputy Superintendent of Police (P) Smt. Rajashree Dhandia, went to the house of the Member, POCSO Committee, viz. Smt. Rajasree Roy and found the victim girl along with her mother. Then the victim and her mother narrated the entire incident as to how the accused had committed rape on his minor daughter in a drunken condition. The victim was then taken by them to the Civil Hospital, Hailakandi and later, referred to the Silchar Medical College and Hospital (SMCH), Silchar for medical examination. The next day, the victim was handed over back to her mother.

12. PW-6 Smt. Rajashree Roy was posted at the District Child Protection Unit, Hailakandi as a POCSO support member. She has deposed that on 30/08/2017, at around 3 p.m., the complainant came to her office and narrated the entire facts as to how her daughter was sexually assaulted by her husband. PW-6 has also stated that the age of the victim girl was about ten years. After hearing the version of the complainant, she had drafted the complaint (Ext. 1) addressing the same to the District Child Protection Officer, Hailakandi.

13. PW-7 Sri Milu Kalindi is known to the accused but he did not have any personal knowledge about the incident. Therefore, the testimony of this witness is not of much significance in this case.

14. The medical examination of the victim girl was conducted by Dr. Orina Raha, who was posted as the GDMO, Forensic Medicine, SMCH, Silchar on 01/09/2017. According to Dr. Raha (PW-8), the medical examination of the victim was conducted on that day at about 11-30 a.m. and she found that the age of the victim was around 10 years. The doctor has opined that on examination of the victim, she found hymen old tear at 9'O clock position. In her deposition, the PW-8 has also stated that there was evidence of sexual penetration found in the person of the victim although there was no injury on the body.

15. PW-9 Smt. Rajasree Dhandia was the Deputy Superintendent of Police (Probation), who was on duty in the Hailakandi Police Station on 30/08/2017. PW-9 has stated that on being informed by the Officer-in-Charge as regards the complaint received from the District Welfare Officer, lodged by the PW-1, a case was registered and the matter was entrusted to her for investigation. She had visited the place of occurrence, recorded the statement of the witnesses and found the accused person in his house. Accordingly, the accused was apprehended by her. On getting the information that the victim was with her mother in the house of one Smt. Rajashree Roy (PW-6), where she was working as a Maid, the PW-9 immediately went there, recorded the statement of the victim, her mother and Smt. Rajashree Roy and thereafter, forwarded the victim to the Civil Hospital, Hailakandi. Later on, the victim was referred to the SMCH, Silchar. PW-9 has also stated that the statement of the victim and her mother under Section 164 Cr.P.C. was recorded. She had also collected the medical report from the SMCH and thereafter, submitted charge sheet against the accused under section 4 of the POCSO Act.

16. In his statement recorded under Section 313 Cr. P. C, the accused has denied all the

incriminating circumstances put to him but the defense side did not adduce any evidence.

17. Taking note of the evidence available on record, the learned trial Court had found the accused guilty of committing rape upon his minor daughter and accordingly convicted him under Section 6 of the POCSO Act, 2012 and sentenced him, as above.

18. From a careful reading of the testimony of the witnesses, we find that the version of the victim girl (PW-3) is very categorical and the same is consistent with her statement recorded under section 164 Cr.P.C. and the version given in the complaint (Ext.1). The version of the victim also finds adequate support from the testimony of PW-1, who is the complainant and the mother of the victim. During the cross examination of PWs 1 and 3, their testimonies could not be shaken.

19. The evidence adduced by the remaining witnesses unfold the entire story starting from receipt of complaint from the mother of the victim till laying of the charge sheet against the accused. There is nothing on record to impeach their testimony in any manner.

20. From an analysis of the evidence brought on record, it is apparent that the husband of the informant is a habitual drinker and in a state of intoxication, he had not only repeatedly, sexually assaulted his minor daughter (victim) but had also made similar attempts in the past on his eldest daughter, as a result of which, she had to be sent away to Karimganj. The evidence adduced by the prosecution side, therefore, proves the charge framed against the accused beyond reasonable doubt. Situated thus, we do not find any justifiable ground to interfere with the impugned judgement and order dated 20/09/2018 passed by the learned trial Court.

21. Coming to the plea of lesser punishment raised by the learned Amicus Curiae, we find from the testimony of PW-1 that the appellant does not have any earning and it is the PW-1, being the mother of five children, who has to work as a domestic help so as to support her family. The accused does not support his wife or the children and he does not have any source of income. Having regard to the nature of offence committed by the appellant and keeping in mind the facts and circumstances of the case in its entirety, we do not find any good ground to adopt a sympathetic approach towards the appellant and reduce his jail sentence. As such, the submission made by the learned Amicus Curiae praying for reducing the jail sentence of the accused, stands rejected.

22. For the reasons stated herein before, we do not find any merit in the appeal. The

appeal is, therefore, dismissed.

23. The conviction of the appellant awarded by the learned trial Court is hereby affirmed.

24. Before parting with the record, we would like to place on record our appreciation for the services rendered by Ms. Purnima Baruah Bordoloi, learned Amicus Curiae and direct the Registry to make available to him, just remuneration, as per the notified rate.

Send back the LCR.

JUDGE

JUDGE

Sukhamay

Comparing Assistant