

**IN THE COURT OF
SPECIAL JUDGE (POCSO) :: SONITPUR, TEZPUR
:: ASSAM**

Present: R. Medhi, Special Judge
Date of Judgment: 20-12-2022
Special (POCSO) case No. 21 of 22

(Dhekiajuli PS FIR No. 02 of 22)

COMPLAINANT:	State of Assam
REPRESENTED BY:	Sri. S.K. Maitra, Ld. Special PP.
ACCUSED:	Nur Uddin
REPRESENTED BY:	P.K. Sharma, Learned Advocate.

APPENDIX-13

Date of Offence:	31-12-2021
Date of FIR:	01-01-2022
Date of Charge Sheet:	28-02-2022
Date of Framing of Charge:	29-06-2022
Date of commencement of evidence:	23-09-2022
Date on which Judgment is reserved:	20-12-2022

Date of Judgment:	20-12-2022
Date of the Sentencing Order, if any:	Does not arise

ACCUSED DETAILS

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A1	Nur Uddin	02-01-22	03-02-22	U/s 376 IPC r/w Sec 4 of POCSO Act	Acquitted		1 month 2 days

APPENDIX-14

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL)

		WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Withheld (Victim girl)	Victim
PW2	Smti Jonaki Tanti	informant
PW3	Geeta Tanti	Related Witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. Prosecution:

Serial	Exhibit Number	Description
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No.		
1	Ext-P-1(1)	Statement U/s 164 CrPC
2	Ext-P-1(2)	Signature of victim
3	Ext-P-2	Seizure list
4	Ext-P-2(1)	Signature of victim
5	Ext-P-3	Zimmanama
6	Ext-P-3(1)	Signature of victim

B. Defence:

Serial No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Serial No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Serial No.	Exhibit Number	Description
NIL	NIL	NIL

JUDGMENT

1. In brief the case as it replicates from the FIR dated 01-01-2022 filed by Smti Junaki Tanti before the Dhekiajuli Police Station is that on 31-12-2021 at around 12 AM midnight, the minor daughter of the informant was taken

away forcefully from her home by accused Md. Nur Uddin to Tulip Tea Estate and with a promise to marry her committed rape on her and after committing rape on the minor victim girl, the accused left her alone in the bushes.

2. Based on the said FIR, a case being Dhekiajuli PS Case No. 02/2022 U/Sec. 376 IPC R/w Sec. 4 of the POCSO Act, 2012 was registered and investigated into and after completion of the investigation, charge-sheet was submitted against the accused.
3. On appearance of the accused person, copies of relevant documents were furnished to him in compliance of the provision of Sec.207 CrPC. Having heard both the sides and considered the materials on record, formal charges were framed against the accused person U/Sec. 376 IPC read with Sec. 4 of the POCSO Act, 2012 and had been read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. During trial, the prosecution has examined as many as 3 (Three) witnesses including the alleged victim girl. On closure of the prosecution evidence, the accused was not examined U/s 313 CrPC as the material witnesses have not implicated any materials against the accused. Defence did not adduce any evidence. At the end of the trial, the argument advanced by the learned counsel for both the sides were heard.

POINT FOR DETERMINATION

- *Whether on 31-12-2022 at about 12 AM midnight, the accused committed rape on the minor daughter of the informant, who is aged about 15 years and thereby committed an offence punishable U/S 376 IPC?*
- *Whether on or around the aforesaid time, the accused committed penetrated sexual assault on the informant who was a child under 18 years of age and thereby committed an offence punishable U/s 4 of the POCSO Act?*

**DISCUSSIONS, DECISIONS AND REASON FOR
DECISION**

5. I have heard the arguments advanced by learned counsel for both the sides and also gone through the evidence on record.
6. It is to be noted at the outset that in order to prove a charge under POCSO Act, 2012, the prosecution has to establish that the victim was a child under 18 years of age. In this case, the prosecution has not adduced any documentary evidence to prove

the age of the victim girl, except the seizure list showing about seized of a birth certificate of the victim girl provided by Alimabad Provincialised M. E. Madrassa, but the said seized birth certificate was not produced and neither it was proved. The prosecution has mainly relied on oral evidence and the medical evidence to prove the aforesaid factum of age. PW1 (Victim) while deposing her evidence her age was recorded as 19 years old and the date of adducing evidence was 23.09.2022. PW1 further stated in her examination in chief that police had taken from her the school certificate and she put her signature in the seizure list. Later on police had given zimma of the said birth certificate, but at present the original birth certificate was destroyed in the flood. Ext. P-2 is the seizure list and Ext. P-2(1) is her signature, Ext.P-3 is zimmanama and Ext.P-3(1) is her signature. PW2, Smti Jonaki Tanti, has deposed that she submitted a school certificate of her daughter to the police and also put her thumb impression in the seizure list. But, the prosecution has not brought the same on record for reasons which remain unexplained. Thus, an adverse inference can be drawn against the prosecution U/s 114 (g) of the Evidence Act. The position being so, the oral evidence does not assume any significance.

7. Now coming to the main course of the evidence with regard to the alleged offence, it reveals that PW1 (Victim) in her deposition given in chief examination has stated that on 1st January, 2022 at about 9 PM while she was going to Sudar Tanti's house, who is her uncle, she called upon the accused Nur Uddin over phone to meet her and when the said accused came, then they both were talking in the road. Then the villagers saw them talking and made hue and cry. The villagers were in inebriated condition. PW1 also stated that she had love affairs with the accused since last 4-5 years. PW1 further stated that her mother had come to know about her love affairs with the accused from the villagers and her maternal uncle and on being told by the villagers and her maternal uncle, her mother had lodged the FIR on next day of the incident. To the police station she went with her mother, maternal uncle, Pintu Paik, grandmother, Mangli Paik and uncle, Sudar Tanti. PW1 also stated in her evidence that she came to the Court for recording her statement and Ext.P-1 is her statement recorded by the Hon'ble Court and Ext.P-1(1) and Ext.P-1(2) are her signatures.

8. PW1 in her cross-examination had also reiterated that she had love affairs with the accused and she had called upon the accused to meet her in the road on the

day of occurrence of the incident, but the accused had not committed any wrongful act with her. She further stated in her cross-examination that while giving her statement before the Hon'ble Court under Section 164 CrPC, she had stated as tutored by her maternal uncle. PW1 also stated that police took her for medical examination.

9. PW2, Smti Jonaki Tanti, in her deposition given in chief examination has stated that she is the informant of the case and the victim is her daughter and she know the accused. On the fateful day that was on 01st January, 2022 at about 4 AM, people of her line came to her house and told her that her daughter was standing in front of her front door and during that time, the people were in inebriated condition and they also envy them, but she do not know why they envy them. She also stated that the people made hue and cry and asked them to go to the police station. Thereafter, at about 8 AM, she along with her brother-in-law, Sudar Tanti, her brother, Bishnu Paik, her mother, Sita Paik went to the police station and her daughter too went along with her to the Dhekiajuli police station and there she lodged her FIR against the accused Nur Uddin and she lodged the FIR as per version of the line people, where she put her thumb impression. PW2 further stated that

she had submitted a school certificate of her daughter to the police and she put her thumb impression in the seizure list. She also stated that accused Nur Uddin had surrendered before the police.

10. PW2 during her course of cross-examination had stated that her FIR was written in the police station and she do not know about the contents of the FIR. She further stated that, her daughter had not stated any incriminating things against the accused, rather her daughter told her that she was in love with the accused, Nur Uddin and due to fear of her 'Mama' (Maternal Uncle) and 'Khura' (Uncle) she did not state to her earlier.

11. PW3, Smti Getta Tanti, in her deposition given in chief examination has stated that the present age of the victim is about 18 years and the victim is her niece. PW3 also stated that the incident of the instant case took place this year at about 8 PM and during that point of time she was in her house. During that point of time she heard 'hullah' in the road i.e. about 2-3 houses away from her house and hearing 'hullah' she came out from her house and heard from the villagers that both the victim and the accused was talking in front of the house of the victim girl. Then her brother's

wife was asked by the villagers to file a case against the accused, Nur Uddin, as because the accused and her daughter was talking. PW3 further stated that she has not seen police coming to her brother's house and police has not recorded her statement in this case and not even she went to the police station. PW3 also stated that at the time of occurrence of the incident, the victim girl studying in school and when she asked to the victim about the incident, then she told her that she had love affairs with the accused, Nur Uddin and for that she was talking with him on that day and when the villagers saw them talking, raised hue and cry.

12. PW3, during her cross-examination has stated that the accused is going to get married very soon with the victim girl. She further stated that she does not know the exact age of the victim girl.

13. From the evidence of the PWS, as discussed above, it does not smear about committing of rape or offence under POCSO Act. Rather, it reveals that there is love affairs in between the victim and the accused, Nur Uddin and on the fateful day, they were both talking standing in front side of the of the victim's house or in the road, as stated by the victim and seeing them talking, the villagers, who were in

inebriated condition raised hue and cry and the mother of the victim girl, that is PW2, under compulsion from her brother, victim's uncle and villagers, had lodged the FIR of this case against the accused, Nur Uddin.

14. Thus, from the aforesaid evidence, it is crystal clear that the alleged victim girl was in love with the accused and on the fateful day, she herself called upon the accused to meet her in the road and when the accused came and was talking, then the villagers saw them talking and then they raised hue and cry, being in inebriated condition. On the other hand, there is no smell of doing sexual act by the accused on the victim girl on the fateful day. So, the fact that the victim girl was raped by the accused is not proved by the evidence on record. Therefore, it must be held that the evidence on record is deficient to bring home the charge against the accused.

15. **In the result and for the discussions made hereinabove,** I am constrained to hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts. **The accused is not found guilty of any offence as charged and as such, he is acquitted of the charges and set at liberty forthwith.**

16. Forward a copy of this judgment to the District Magistrate in compliance of Sec.365 CrPC.

Given under my hand and seal of this court on the 20th day of December/2022.

Typed and Corrected by me:

**Special Judge,POCSO
Sonitpur:: Tezpur**