

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE****:::UDALGURI**

**Present :Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Special (POCSO) 09/2018****U/S 341/323 IPC R/W Section 10 of POCSO Act****State of Assam****-Vs-****Tilak Rajbhor.....Accused.**

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mrs. Bhuchita Saharia, Learned Advocate.

Date of Evidence : 04-08-18: 29-09-18: 26-11-18: 20-12-18:  
18-01-19: 18-03-19: 27-05-19.

Date of Argument : 14-08-2019.

Date of Judgment : 17-08-2019.

**J U D G M E N T**

1. The prosecution case in brief is that on 12-01-18, informant Rama Sankar Chouhan lodged an FIR with the Officer-in-Charge of Khoirabari P.S. alleging that on 11-01-18, in the evening at about 08 pm while his fourteen years old daughter victim-A was returning home from the shop, on the road, the accused grabbed her and tried to drag her to a distance with an intention to commit rape upon her. Then the victim raised alarm and on hearing alarm the informant rushed to the place of occurrence and while trying to prevent the accused, he inflicted cut injury on the right thumb of informant with a

dao, and thereafter he fled away. It has also been stated in the FIR that the victim informed that while she was proceeding to the shop the accused hugged her but on her refusal and request he let her go.

2. On the basis of the FIR, Mazbat PS Case No. 03/18, under Section 341/326 IPC R/W Section 10 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 341/326 IPC R/W Section 10 of POCSO Act against the accused person Tilak Rajbhor.
3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 341/326 IPC R/W Section 10 of POCSO Act, learned Special Judge framed charges there under and the ingredients of charges under Section 341/326 IPC R/W Section 10 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 04-06-19, transferred the case to this court for disposal.
4. The prosecution in order to prove its case examined the following 11(eleven) witnesses:
  - PW1- Rama Sankar Chouhan.
  - PW2- Victim-A.
  - PW3- Dr. Priti Rekha Saikia.
  - PW4- Dr. Chandan Kr. Saha.
  - PW5- Nanaki Chouhan.
  - PW6- Hitesh Chouhan.
  - PW7- Sumitra Chouhan.
  - PW8- Krishna Kt. Deka.
  - PW9- Geeta Rajbhor.
  - PW10- Manju Rajbhar.
  - PW11- S.I. Umesh Bordoloi.

5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
6. Situated thus, the points for determination in the instant case are set up as follows:-
  - (I) Whether the accused person wrongfully restrained Victim-A?
  - (II) Whether the accused person voluntarily caused grievous hurt to informant Rama Sankar Chouhan on his right thumb?
  - (III) Whether the accused person committed aggravated sexual assault upon Victim-A, aged about 14 years?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mrs. Bhuchita Saharia.
8. Learned Addl. P.P. has submitted that prosecution has adduced cogent, reliable and trustworthy evidence to prove the case beyond all reasonable doubt. The accused has committed sexual assault upon the victim and also assaulted her after. Hence he is liable to be punished under Section 341/326 IPC R/W Section 10 of POCSO Act.
9. Per contra learned defence counsel has argued that prosecution has failed to prove the charges against the accused by adducing consistent and credible evidence. The prosecution witnesses are related. The prosecution has failed to examine any independent witness though allegedly the incident happened near a market place. There are material discrepancies in the evidence of vital prosecution witnesses of the case which raise a reasonable doubt as to the prosecution case. Learned defence has further argued that the accused person has also filed a case against the informant for the incident of assault upon him, even the prosecution witnesses have deposed that they had heard

about the assault upon the accused by the informant. Therefore, the accused is liable to be acquitted.

10. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
11. PW1 is Rama Sankar Chouhan, informant and father of the Victim. In his evidence PW1 had deposed that at the material point of time his wife sent his victim daughter to fetch some items from a nearby shop. On the way to the shop the accused intercepted her by catching hold of her hand and on this his daughter raised hue and cry out of fear. On hearing her cry PW1 immediately rushed to the place of occurrence alongwith his wife. Then they saw the accused had been detaining his daughter catching hold of her hand. Seeing this incident PW1 asked the accused as to why he was catching hold of the hand of his daughter. When his daughter managed to escape from the clutches of the hand of the accused, suddenly the accused gave a blow on his face and also tried to assault him with a dao on his head. But he managed to ward off the dao blow by his right hand as a consequence his finger was cut. When he received injury on his hand he fell down on the ground and became unconscious. Thereafter, he was taken to hospital for treatment by his wife alongwith some other persons. On the next day of the incident PW1 lodged the FIR with the police. Ext.1 is the FIR. Ext.1(1) is the signature of PW1. In cross-examination, PW1 had stated that though he had stated in the FIR that his daughter was 14 years old at the time of occurrence but he had not submitted her birth certificate. He had stated the age of his daughter on presumption. The incident occurred at a distance of about 30 meters away from his house in front of the house of the accused. The market where his daughter was proceeded is at a distance of 60 meters from his house. He had strained relation with the accused prior to the incident as regards some other incident. In connection with this incident the mother of the accused also lodged an FIR against them before the police and

the said case is still pending in the court of CJM, Udalguri. The mother of the accused lodged the said case against them on the allegation that on the same day of occurrence PW1 along with others assaulted the accused. The police had not seized the dao by which the accused inflicted injury on his hand. PW1 had denied the suggestion that on the previous day of the incident accused returned from Bangalore and on the day of occurrence due to previous enmity he along with his brother and wife assaulted the accused also threw chili powder in his eyes and thereafter, the accused was taken to hospital for his treatment and that they were involved in assaulting the accused and in order to save themselves they made out false story to rope the accused in this case. PW1 had denied the suggestion that as the accused had undergoing medical treatment due to injury caused by them and as such, he could not lodge the ejarah against them before the police before lodging this false case by them. PW1 had denied the suggestion that as they assaulted the accused person and in that melee he fell down on the ground and thereby sustained self-inflicted injury and that no incident had occurred as stated in the FIR.

12. PW2 is the victim girl. In her evidence PW2 had deposed that the incident occurred on 11-01-18, at around 07.30 pm. At the material point of time she went to buy dry chili from a nearby shop. While she was proceeding to the shop, at that time the accused suddenly came from behind and grabbed her. Accused is her co-villager. Then she asked the accused to release from his clutch. Suddenly she could manage to release from his clutch and decided to return back to her home. The accused again grabbed her by his hands and dragged her towards the latrine of Jhargaon High School situated nearby. PW2 again asked the accused to free her from his clutch then accused said that he would give her money and asked her not to shout. However she raised shout and on hearing her shout her father came from home and seeing the accused grabbing her in his hands, her father asked the accused to release her. The accused after releasing her suddenly gave a blow on her face. Thereafter the accused who also armed with a dao on his hand cut one

finger of her father. Thereafter she returned to her home, narrated the incident before her mother. Then her mother went to the place of occurrence. In this regard her father lodged an ejarah with the police. PW2 statement was recorded under Section 164 Cr.P.C. Ext.-2 is her statement recorded under Section 164 Cr.P.C. Ext.-2 (1) and Ext.-2(2) is the signatures of PW2. In cross-examination, PW2 had stated that in connection with the same incident the accused also lodged an FIR against her parents and that case is pending at trial stage before the CJM, Udalguri. Jhargaon High School is situated near the shop where she was going to buy dry chili. The shop where she went to buy chili is situated in the market and many people were present in the market. The incident occurred in the backside of Jhargaon High School. PW2 had denied the suggestion that on the date of the occurrence accused did not try to molest her by catching hold of her hands while she was proceeding to buy chili from the market. PW2 had denied the suggestion that as on the date of occurrence her parents assaulted the accused and in that connection the accused lodged an FIR and therefore in order to save themselves from that case her father manufactured a false case and involved her as the victim of this case. PW2 had denied the suggestion that on the date of occurrence when her father came to rescue her accused had not cut finger of her father by means of a dao. PW2 had denied the suggestion that accused did not try to grab her on the date of occurrence and they made a fabricated case to get him punish as a revenge of filing a case by the accused against her parents for assaulting him.

13. PW3 is Dr. Priti Rekha Saikia. In her evidence PW3 had deposed that on 12-01-18, on that day she examined Rama Sankar Chouhan at Mangaldai Civil Hospital and found as follows:

Swelling & Tenderness Rt. Hand & thumb. X-ray shows-NAD. Nature of injury-Simple. Weapon-Blunt.Ext.-3 is the injury Report. Ext.-3(1) is the signature of PW3. In cross-examination, PW3 had stated that the injury sustained by the patient may also cause due to falling against hard substance. PW3 did not find any cut injury on the patient.

14. PW4 is Dr. Chandan Kr. Saha. In his evidence PW3 had deposed that on 16-1-18 he examined victim-A, at Udalguri Civil Hospital and on examination he found the following:-

Physical examination:-

Height- 165 cm, weight- 33 Kg, teeth- 28 Nos., axillary hair- absent, pubic hair- present, breast- , hymen- Absent, vaginal injury not seen, marks of violence none, clothing Blue black check top kurti & green legging.

Vaginal swab examination for spermatozoa:- no spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- Approximate age 14-16 years.

- (1) Right wrist joint- Epiphyseal union completed in upper end of radius.
- (2) Right elbow joint- Epiphyseal union not completed in lower end of radius/ulna.
- (3) Epiphysis not appeared in iliac crest.

PW4 had further deposed in his opinion:

- (1) No marks of violence seen.
- (2) No evidence of recent sexual coils seen.
- (3) Radiological age 14-16 years.

Ext.4 is the medical report, wherein Ext. 4(1) is the signature of PW4.

Cross-examination had been dispensed.

15. PW5 is Nanaki Chouhan. In her evidence PW5 had deposed that the occurrence took place in the month of January 2018. At the material time of the incident she was at her home. At around 8PM she sent her granddaughter to buy some chilly from the nearby shop. After some time her daughter returned home and started to shout out of anger. On being asked the victim told her that when she had gone to buy chilly to a nearby shop then the accused caught hold of her and she had already informed about the matter to her father and her father picked up a quarrel with the accused at the place of occurrence. In cross-examination, PW5 had deposed that she also did not know as to what incident occurred at the place of occurrence.

The informant used to quarrel at the slightest pretext. The informant also assaulted the accused and in this regard a criminal case is pending at the CJM court Udalguri. PW5 had denied the suggestion that the informant lodged a false case against the accused.

16. PW6 is Hitesh Chouhan. In his evidence PW6 had deposed that the occurrence took place in 11-01-18 at about 8 PM. During that time he was at my home. In the meantime his sister-in-law Sumitra Chauhan sent her niece to bring some chilly from a nearby shop. When she was proceeding to shop and after reaching a little distance they heard her cry. On hearing her cry his brother Rama Sankar Chauhan went to the place of occurrence. Thereafter both his brother and his niece returned home and at that time he saw cut injury in the right hand of his brother. On being asked informant told before them that when informant went to the place of occurrence on hearing cry of his niece he found the accused at the place of occurrence along with his niece and his niece told informant that while she was proceeding to shop the accused suddenly caught hold of her. Then his brother asked the accused as to why he tried to molest his niece and as a result an altercation ensued and the accused assaulted his brother on his right hand with a sharp cutting weapon. In cross-examination, PW6 had stated that he did not visit the place of occurrence when the incident had occurred. He did not know regarding any criminal case lodged by the accused against his brother Ram Charan Chouhan. PW6 had denied the suggestion that on the date of occurrence accused neither caught hold of his niece nor assaulted his brother but on the date of occurrence his brother assaulted the accused at the place of occurrence without any provocation.

17. PW7 is Sumitra Chouhan, mother of the victim. In her evidence PW7 had stated that the occurrence took place on 11-01-18 at about 8 PM. While she was cooking food for the night she found that there was no chilly for cooking so she sent her daughter to see whether the shops had been open or not. Accordingly the victim proceeded towards the market situated near her

house. After few moments her daughter began to shout loudly. On hearing her shout her husband went out and saw the accused had been forcefully catching hold of her daughter. On seeing this her husband tried to free her daughter from the clutch of the accused and thereafter a brawling took place between the accused and her husband and at that moment the accused who had been armed with a Dao inflicted a blow in the right hand of her husband causing injuries. As soon as her daughter freed from the clutch of the accused she came home and narrated about the incident. In this regard her husband lodged FIR before the police. In cross-examination, PW7 had stated that her daughter narrated her about the incident. She did not go to the place of occurrence after hearing the cry of her daughter. Relating to this incident the accused also filed a counter case and that case is pending for trial at Udalguri court. PW7 had denied the suggestion that on the date of occurrence accused did not catch hold of her daughter to outrage her modesty and rather on the date of occurrence her husband assaulted the accused as a result of which the accused sustained injuries and in order to save themselves from the acquisition of the offence they had planted a false story. PW7 had denied the suggestion that on the date of occurrence the accused sustained serious injuries due to assault caused by her husband for which he was immediately sifted to Khairabari hospital which caused delay in lodging FIR by the accused and taking advantage of it they lodged this false case to save themselves. PW7 had denied the suggestion that she had deposed falsely for the sake of her husband.

18. PW8 is Krishna Kt. Deka. In his evidence PW8 had deposed that the occurrence took place in the month of January 2018. On the next day of the incident he came to know from his wife that one Sankar inflicted 'dao' blows on accused Tilak. Barring this he knew nothing about the incident. In cross-examination, PW8 had stated that he did not remember the exact date of occurrence. The accused lodged an FIR against Sankar for assaulting him and in that case he had deposed before the court.

19. PW9 is Geeta Rajbhar. In her evidence PW9 had deposed that the occurrence took about 10-11 months ago. At the material time one day she came to her mother's home on that day she came to know from the daughter of the Rama Sankar Chowhan that the accused touched her hand. She did not witness the incident. She was not sure as to whether the accused touched the hands of the victim. In cross-examination, PW9 had stated that she did not witness the incident. On the date of occurrence rather they heard that accused was assaulted by the family members of the victim.
20. PW10 is Manju Rajbhar. In her evidence PW10 had deposed that about 1 year ago the incident took place. At the material time she heard that a quarrel took place between the informant and accused but she did not witness the incident. In cross-examination, PW10 had stated that on the next day she heard that quarrel took place between informant and accused.
21. PW11 is S.I. Umesh Bordoloi. In his evidence PW11 had deposed that on 12-01-18 he was posted as OC Khairabari PS. On that day one Rama Sankar Chowhan lodged an FIR on the basis of which he registered Khairabari PS case No. 03/18 U/S 341/326 IPC R/W section 10 of POCSO Act. PW11 took up the investigation of the case by himself. During the course of the investigation he visited the place of occurrence, prepared the sketch map of the place of occurrence, recorded the statement of witnesses U/S 161 CrPC, the victim was sent for medical examination, the victim was also sent to get her statement recorded U/S 164 CrPC and the accused was arrested and forwarded to court. PW11 collected the medical report of the victim as well as the injury report of the accused. On conclusion of the investigation he laid the charge-sheet against the accused Tilak Rajbhar U/S 341/326 IPC; R/W section 10 of POCSO Act. He did not seize any articles in connection with this case. Ext. 5 is the sketch map wherein Ext. 5(1) is the signature of PW11. Ext. 6 is the charge sheet wherein Ext. 6 (1) is the signature of PW11. In cross-examination, PW11 had stated that the accused sustained injuries in

connection with this case. PW11 had denied the suggestion that he had not properly investigated in this case.

22. On careful scrutiny it has been transpired from the evidence of the prosecution witnesses that the market is situated near the house of the victim. The incident happened while the victim was proceeding to the market. The victim revealed in cross examination that the incident happened in the backside of Jhargaon High School. The school is situated near the shop where she was going to buy dry chili. The shop where she went to buy chili is situated in the market and many people were present in the market. Thus there are presence of many people near the place of occurrence. But prosecution has failed to examine any independent witness in the case who had witnessed the incident. PW8 Krishna Kt. Deka, who is an independent witness of the case, has not supported the prosecution case. In his evidence PW8 had deposed that on the next day of the incident he came to know from his wife that one Sankar inflicted 'dao' blows on accused Tilak. Barring this he knew nothing about the incident. PW9 is Geeta Rajbhar had not witnessed the incident. At the material time one day when she came to her mother's home, she came to know from the daughter of the Rama Sankar Chowhan that the accused touched her hand. PW10 is Manju Rajbhar had only heard about a quarrel took place between the informant and accused. She did not witness the incident. Thus there is no independent prosecution witness who had seen the incident despite the fact that the incident happened near a market place where there were many people present.

23. It is found from the evidences on record that the informant had inimical relationship with the accused. On the date of occurrence the informant also assaulted the accused as revealed by the mother of the informant. PW5, the mother of the informant had also revealed in cross examination that her son used to quarrel at the slightest pretext. During cross examination she also stated that she did not know as to what incident occurred at the place of occurrence

24. In the instant case, PW1, PW2, PW5, PW6 and PW7 are the members of same family. PW6 is the uncle of the victim. According to him at the time of incident he was at his home. He had heard the alarm raised by the victim on her way to nearby shop. Though his brother (informant) went to the place of occurrence, but PW6 did not accompany him. Similarly PW7 the wife of the informant and mother of the victim revealed in cross-examination that she did not go to the place of occurrence after hearing the alarm raised by her daughter. The conduct of PW6 and PW7 not going to the place of occurrence even after hearing the alarm raised by the victim during night time is not natural. Moreover, the evidence of PW1 that on hearing the alarm raised by the victim he immediately rushed to the place of occurrence alongwith his wife is inconsistent with the evidence of his wife that she did not visit the place of occurrence.
25. Moreover, the evidence of PW1, PW2, PW6 and PW7 with regard to the cut injury sustained by PW1 on his right finger is also not corroborated by medical evidence. Medical evidence has negated that PW1 sustained no cut injury on his hand. Thus the prosecution witnesses have exaggerated in their evidence about the injuries sustained by the informant.
26. In the instant case, the contents of the FIR do not tally with the evidence adduced by the prosecution witnesses including the informant(PW1). While in the FIR two incidents of sexual assault upon the victim had been mentioned, first while she was going to the shop and the second incident on her way back to home, but in their evidence the informant, the victim and their other family members had deposed about a single incident only.
27. In this case apart from the family members of the informant and the victim, there is no other prosecution witnesses who has deposed about the incident. Though near the place of occurrence the houses of PW8, PW9 and PW10 are situated as evident from Ext.-5, the sketch map, but none of them had

deposed anything about the incident of sexual assault upon the victim. The evidence of PW9 is only to the effect that she had heard about the incident from the victim.

28. On cumulative assessment of the evidence on record it is found that there are material discrepancies in the evidence of prosecution witnesses, the conduct of the prosecution witnesses is not natural and the contents of the FIR are inconsistent with the evidence adduced by the prosecution witnesses. The witnesses have exaggerated in their evidence with regard to the injury sustained by the informant. Apparently the relationship between the informant and the accused is not cordial, and therefore, it is highly unsafe to rely on the inconsistent and uncorroborated testimonies of the victim and her family members.
29. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 341/323 IPC, R/W Section 10 of POCSO Act against the accused person beyond all reasonable doubt.
30. Situated thus the points for determination are decided in the negative and against the prosecution.

### **ORDER**

31. In the result, the accused Tilak Rajbhor is found not guilty under Section 341/323 IPC, R/W Section 10 of POCSO Act and acquitted of charges under Section 341/323 IPC, R/W Section 10 of POCSO Act and set with liberty forthwith.
32. Bail bond executed by the accused Tilak Rajbhor and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

33. Judgment is signed, delivered and pronounced in the open court today the 17<sup>th</sup> day of August, 2019.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::::::::::UDALGURI.****Special (POCSO) 09/2018****APPENDIX**

(A) Prosecution Exhibits :

Ext.-1: FIR.

Ext.-2: Statement of the victim-A U/S 164 Cr.P.C.

Ext.-3: Injury report of informant.

Ext.-4: Medical Report of victim.

Ext.-5: Sketch map.

Ext.-6: Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Rama Sankar Chouhan.

PW2- Victim-A.

PW3- Dr. Priti Rekha Saikia.

PW4- Dr. Chandan Kr. Saha.

PW5- Nanaki Chouhan.

PW6- Hitesh Chouhan.

PW7- Sumitra Chouhan.

PW8- Krishna Kt. Deka.

PW9- Geeta Rajbhor.

PW10- Manju Rajbhar.

PW11- S.I. Umesh Bordoloi.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)  
Addl. Sessions Judge.  
Udalguri.