# IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS Special Judge, Sivasagar.

### Spl. (P) Case No. 7 of 2016 U/S 6 of POCSO Act

(Arising out of Sivasagar P.S. Case No.256/2016)

State of Assam

-vs-

Md. Robibul Ali ...... Accused

#### **APPEARANCE:**

For the prosecution : Sri A. K. Bora, P.P.

For the accused : Sri Santanu Gogoi, Advocate.

Date of framing charge : 31.08.2016
Dates of evidence : 08.02.2017
Date of S/D : 14.02.2017
Date of Argument : 14.02.2017
Date of Judgment : 14.02.2017

# J U D G M E N T

- 1. Prosecution case, in brief, is that on 29.03.2016, Musstt. Bhanu Begum lodged an FIR before the I/C, Cherekapar Out Post, alleging, inter alia, that on 28.03.2016, at about 5 p.m. accused Md. Robibul Ali committed rape on her minor daughter Victim X (name withheld), aged about 7 years by inducing her while she was going to attend the natures call near the river.
- 2. On receipt of the FIR, Sivasagar P.S. Case No.256/2016, U/S 4/6 of POCSO Act was registered and investigated into the case. During Spl. (P) Case No. 7 of 2016 Page 1 of 5

investigation, I.O. visited the place of occurrence, prepared the Sketch map and recorded the statements of the witnesses. During investigation I.O. has arrested the accused Robibul Ali, sent the victim to the Civil Hospital for her medical examination and also forwarded the victim to the court for recording her statement U/S 164 Cr.P.C. On completion of investigation, I/O has submitted Charge-Sheet against the accused U/S 4/6 of POCSO Act, 2012.

- 3. During investigation, vide order dated 19.05.2016, the accused was allowed to go on bail. On submission of Charge sheet, provision of section 207 Cr. P.C was complied with and after hearing both the sides, charge u/s 6 of POCSO Act, 2012 was framed to which he pleaded not guilty and claimed to be tried.
- 4. During trial, prosecution side has examined only three witnesses i.e. Medical Officer Dr. Sanjib Mahanta as P.W.1, informant as PW 2 and victim X as P.W.3.
- 5. Upon completion of the prosecution evidence, accused is examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 6. I have heard argument of learned P.P. Mr. A.K. Bora and learned defence counsel, gone through the evidence and documents and considered the submission of both the sides.

# POINT FOR DETERMINATION IS:-

7. (i) Whether on 28.03.2016, at about 5.00 p.m., the accused committed aggravated penetrative sexual assault on the victim X (name witheld) who is below 12 years?

#### **DECISION AND REASONS THEREOF:**

8. P.W. 1 is Dr. Sanjib Mahanta in his evidence deposed that on 29.03.2016 at about 11.35 a.m., on police requisition, he examined the

victim X and on examination of he is of the opinion that the victim girl was below 16 years of age at the time of examination. There was no evidence of injury or sing of recent sexual intercourse detected during examination. He proved his report as Ext.1. In cross examination P.W.1 deposed that he did not find any injury on her private parts. He denied defence suggestion that age of the victim might be above 18 years.

- 9. P.W. 2 Smti Bhanu Begum in her evidence deposed that accused Robibul Ali is her step son from her husband and victim X is her daughter. On 28.03.2016, while she was preparing food, at 5 p.m. her daughter victim X (aged about 6 years) told her that accused Robibul has physically assaulted her by causing bleeding injury. On this, she informed the matter to Police Station by lodging an FIR at Cherekapar Out Post. At that time, her husband was absent. In cross examination by defence, she admitted that she has not seen the incident on her own. She does not want to continue the case by adducing further evidence as accused is her step son. She further deposed that she has no objection if accused is acquitted.
- 10. P.W. 3 the victim in her evidence deposed that about 6/7 months back her step brother Robibul slapped her on her cheek without any fault of her. Accused also badly pinched on her hand wherefrom blood come out. She informed the matter to her mother, who took her to police and informed the matter. Police also took her to Doctor and also brought her to court. In cross-examination by defence, she stated that except slapping and pinching, accused did nothing. Presently they are living with accused by maintaining good relation.
- 11. From the above evidence of the victim and her mother, it appears that there is no evidence of any penetrative sexual assault on the victim by the accused. Exbt. 1 medical report also shows that there was no sign of any injury on private parts. Though some allegation of slapping and pinching with bleeding was made but the medical officer did not find any injury as alleged on the person of the victim. Admittedly the victim and the

accused are related and reside in same campus. Except slapping and pinching, no other allegation was brought on record. The above act at the best may lead to offence u/s 323 IPC which is compoundable. In her evidence, the informant and mother of the victim has submitted that she is not interested to proceed with the case any more.

- 12. In view of the above, I hold that prosecution has failed to prove the ingredients of the offence punishable u/s 6 of POCSO Act, 2012 against the accused.
- 13. Considering all above, accused Robibul Ali is acquitted from the charge U/S 6 of POCSO Act, 2012.
- 14. The bail bonds executed by the accused and his surety stand extended for another six months from today.
- 15. Considering the nature of the case I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357(A) Cr.P.C.
- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 17. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand & Seal of this Court on this the,  $14^{\text{th}}$  day of February, 2017 at Sivasagar.

Special Judge Sivasagar

# **APPENDIX**

- 1. Prosecution witnesses:
  - P.W.1 Dr. Sanjib Mahanta (M.O.)
  - P.W.2 Smt. Bhanu Begum (Informant)
  - P.W.3 victim X
- 2. <u>Defence witnesses</u> Nil.
- 3. <u>Court witnesses</u> Nil.
- 4. Exhibits by prosecution -

Ext.1 - Medical report.

Special Judge, <u>Sivasagar</u>