:: IN THE COURT OF THE SESSIONS JUDGE ::::::::::::::::::: NALBARI ::

<u>Present</u>: Mrs. S. Begum. Sessions Judge, Nalbari.

SPL.(P) CASE NO: 06/2016 U/S- 376(2)(i) IPC r/w sec. 4 of the POCSO Act.

State of AssamComplainant

-Vs-

Sri Shiv Charan Talukdar.....Accused person.

Appearance :-

For the prosecution : Mr. M. Barman, Public Prosecutor.

For the defence : Mr. P. Sharma, Advocate.

Date of argument : 26/09/2016. Date of Judgment : 30/09/2016.

JUDGMENT

The prosecution case as it is reflected in the ejahar lodged by one Smt. Latika Choudhury, is that on 12/1/16 at about 9 pm her daughter Sikhamani Choudhury hereinafter referred as Miss 'X' was dragged from the road by the accused to the field and after causing rape upon her, he released her at 1 am. The victim informed her and as such she lodged the ejahar for taking action against the accused.

- 2. On receipt of the ejahar Mukalmua PS Case No.10/16 u/s-376 IPC r/w section 4 of the POCSO Act has been registered and police force set into motion. On completion of the investigation police submitted charge-sheet against the accused Shiv Charan Talukdar @ Shiv Sankar Talukdar u/s-376 IPC r/w section 4 of the POCSO Act, 2012.
- 3. While the accused entered into his appearance after furnishing the copies of the relevant documents and after hearing both the sides charge was framed against the accused u/s-376(2)(i) r/w section 4 of the POCSO Act. While the charge was read over to the accused he pleaded not guilty and claimed to be tried.

4. Prosecution to bring home the charge against the accused examined as many as six witnesses. The defence case is of denial. However, the defence did not adduce any evidence.

POINTS FOR DETERMINATION

- 5. (i) Whether on 12/1/16 at night the accused at Godira (Mandalpara) under Mukalmua PS committed rape upon the victim, Miss 'X' who is a minor below the age of 16 years and thereby committed an offence punishable u/s-376(2)(i) IPC?
- (ii) Whether the accused on the same day, time and place committed penetrative sexual offence upon the victim 'X' and thereby committed an offence punishable u/s-4 of the POCSO Act ?

DISCUSSION, DECISION AND REASONS THEREOF:

6. To arrive at a judicious decision let me first appreciate the testimony of the witnesses. First of all let me discuss the evidence of star witness PW-2, Miss 'X' who is the victim. The victim testified that about three months ago one day in the evening at about 7-30 pm the occurrence happened. Her mother on the date of occurrence went to the house of her grand-mother at Hajo. She revealed that she went to the house of her youngest grand-mother for grinding rice and at about 7 pm while she was returning back towards her house on her away accused Shiv Charan gagging her mouth dragged her to a nearby field and raped her. According to her at about 1 am the accused fled away after leaving her at the said place. Thereafter she returned back to her house and stayed at the veranda of their house as because her father was sleeping inside the house after locking the door. It is disclosed that in the morning her father noticed her and after hearing about the said incident he made telephone call to her mother and asked her mother to come back from Hajo. While her mother returned back to the house then she narrated everything to her mother and her mother lodged ejahar at the PS. Police brought her to the Civil Hospital, Nalbari and she was medically examined by the Doctor. She testified that her statement was recorded by Magistrate and she exhibited the said statement as Ext-2. She was crossexamined at length. During her cross-examination she revealed that the accused sometimes visits the house of her grand-mother but never visited their house. She disclosed that the house of the grand-mother where she went to grind the rice was not far away from her house. She admitted that the place where she was dragged by the accused is a village road and that by that road a few number of people used to travel. It is disclosed that the field was at a distance of 1 km away from the road. It is revealed that while the accused dragged her at that time the accused gagged her mouth by another hand and she resisted while the accused dragged her. It is revealed by her that while the accused performed bed work with her at that moment he gagged her mouth by both the hands. She also revealed that while he dragged her at that moment she tried to make her free from the clutches of the accused but could not succeed in her attempt. She admitted that there are the house of people near the place wherefrom she was dragged. She also revealed that as her father was sleeping closing the door so she did not awake him and she also did not awake the other persons. She disclosed during her cross-examination that at the time of occurrence she was studying at Godira Gangapur Kumurikata M.E school and she studies in the said school since she was aged about 9 years and that prior to studying at that school she was studying at Hajo for three years. She admitted that her father after the occurrence while charged the accused by saying what he would do now as he did bad works with his daughter then the accused replied " Are you mad? I have not done any such act."

7. PW-1, Latika Choudhury who is the informant cum mother of the victim narrated during her testimony that since one year prior to the incident she and her family started to live at her parents house at Gadira. As her eldest daughter stayed at Hajo along with her grand-mother (matrimonial house of the informant) so at the time of "Uruka" she went to bring her. According to her version the incident happened on that very day at 7-30 pm. Next day morning while she came back from Hajo at that time the victim informed her that while she was returning back from her youngest grant-mother's house at about 7-30 pm after grinding rice, on her way the accused Shiv Charan Talukdar taking her on his lap brought her to the field from the road and after doing bad work with her he left the place after leaving her in the field at about 1 am. It is also disclosed that she further informed her that she alone came back to the house

after the occurrence. She disclosed that on the next day morning while she returned back to the house then the victim informed her about the incident and accordingly she informed all the family members. She lodged the ejahar Ext-1. She disclosed that her daughter was brought for medical examination to the Doctor on the initiation of the police and her statement also got recorded by Magistrate. It is revealed by her that her daughter was aged 13 years at the time of occurrence and at the particular time of occurrence she was studying at class VIII. During cross-examination she revealed that both she and the victim knew the accused since earlier to the incident as he came to her parents house sometimes. It is admitted by her that one month prior to the incident she asked the accused to treat the victim as his sister and he also disclosed that he does not love the victim. It is also disclosed by her during cross that after the occurrence her husband telephoned her and informed her about the occurrence. It is admitted by her that as the accused denied the occurrence so out of anger the case was lodged.

- 8. PW-3, Kiran Hajarika testified that informant Latika is her niece and the victim, Miss 'X' is her grand-child. It is disclosed by her that about three months ago the occurrence happened. She testified that she had a tea stall at the market and along with tea she provided rice cake to the customers. The victim, her mother, her grand-mother used to come to their house for helping her in grinding rice for that purpose. On the date of occurrence the victim came to their house for helping her in grinding rice and thereafter at about 7 pm she returned back from her house. It is disclosed that thereafter the grand-mother of the victim came to her house in search of the victim and reported her that the victim did not reach to house. Though everybody searched for her but could not trace out her. It is disclosed further that the mother of the victim was not in the house on that day and that she went to Hajo on that day. She revealed during cross that the victim went along with the accused and that she had some relation with the accused since prior to the incident. However, nothing in found from her evidence that the victim went with the accused herself. Victim claimed that she was forcibly taken by the accused and accused raped her.
- 9. PW-4, Dr.(Mrs) Dali Gogoi who is the Senior Medical & Health Officer at SMK Civil Hospital, Nalbari examined the victim, aged about 13 year, daughter of

Ranjit Choudhury of village Godira, PS Mukalmua, Dist-Nalbari in connection with Mukalmua PS Case No.10/16 u/s-376(2)(i) r/w section 4 of the POCSO Act and found as follows:-

Hymen torn. No injury found. She was advised for vaginal smear for sperm and for pregnancy test and also for X-Ray for age determination. After examination of all the report regarding above test produced before her and after perusal of the X-Ray the skeletal age of the victim is found to be above 14 years and below 18 years. Pregnancy test found negative. Vaginal smear for sperm also found negative. She exhibited Ext-3 is the medical report and Ext-3(1) & 3(2) is her signature.

- 10. PW-5, Ranjit Choudhury, the father of the victim revealed during his evidence that though his paternal house is at Hajo but since last one year one month prior to the occurrence he used to stay at the house of his father-in-law at Godira with his wife and children. It is disclosed further by him that five months ago on the night of occurrence at about 9/9-30 pm he could know from his mother-in-law that the victim was not in the house. On that particular day his wife was not in the house and she went to Hajo. It is disclosed that he searched for the victim and as could not trace out her so he slept in the house. He disclosed that his house was on the opposite side of the house of his father-inlaw and a road passes through in between his house and the house of father-inlaw. In the morning he noticed his daughter in the veranda and at about 9-30 am his wife informed him that Shiv Charan took his daughter, the victim to the field on the previous night and did bad work with her. It is disclosed that while he telephone Shiv Chran and asked him about the incident then Shiv Charan replied whether he became mad and told that he had no time. Thereafter his wife lodged the ejahar on being angry.
- 11. PW-6, Ajit Das, the I/O did the investigation as he was entrusted with the charge of investigation by the O/C Mukalmua PS after receiving an ejahar Ext-1 from informant Latika Choudhury. He visited the place of occurrence, prepared sketch map, recorded the statement of the victim and also the statement of other witnesses. He brought the victim to SMK Civil Hospital for her medical examination and her 164 CrPC statement was got recorded by Magistrate. The accused Shiv Charan @ Shiv Sankar Talukdaer was arrested. He exhibited Ext-5

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as the sketch map. He collected the medical report. On completion of the investigation he submitted charge-sheet against accused u/s-376 IPC and section 4 of the POCSO Act. During cross-examination the I/O was thoroughly examined on the point of place of occurrence. He revealed during cross-examination that there was house of people about 500 meters away from the place of occurrence.

12. Defence side argued on several count to show that accused is no way involved in the case. It is submitted that there is major contradiction between the testimony of the victim and her parents to that of their 161 CrPC statement and that there is major discrepancy between the evidence of the victim and her parents which make their version doubtful and that court should not rely upon such testimony. It is further argued that not a single independent witness of the locality was examined by the prosecution to establish the case and that the prosecution relied upon the testimony of interested witness only. It is submitted that admittedly there are the houses of may people where from she was allegedly dragged by the accused and if actually any such incident as disclosed by the accused would have happened then certainly these neighbouring persons would have noticed the incident. It is submitted that if actually such incident would have happened and the victim would have been dragged and raped then certainly she would have raise hue and cry and the neighbouring people would have heard the noise and non-examination of these neighbouring person by the prosecution shows that had they been examined then they would have reveal certain thing which would have gone against the prosecution case. It is further argued that the parents of the victim wanted to give marriage of the victim with accused and as he refused so this case has been lodged falsely against him. It is submitted that the conduct of the victim immediately after the alleged incident of rape is very much doubtful. It is submitted that her evidence showed that while she returned back to her house after the alleged incident then she did not awake up her family members or her grand father's family member and sat at the veranda of their house for the rest period of night and informed the family member only on the next morning. It is submitted that such type of conduct is very much unnatural and under the above circumstances the defence argued not to rely upon her evidence.

- 13. Per contra the prosecution side on the other hand argued that prosecution witness has been able to establish a case u/s- 376(2)(i) IPC r/w section 4 of the POCSO Act against the accused without any shadow of doubt and he deserves conviction under the said sections.
- 14. On the back drop of the above forceful argument let me determine whether the prosecution has been able to establish the complicity of the crime by the accused or not.
- 15. In the instant case what it appears from the testimony of the victim is that on the date of occurrence she went to the house of her youngest grandmother for grinding rice and was returning back to her house at about 7-30 pm. Her evidence regarding visiting the house of her youngest grand-mother at night and returning from the said house at about 7-30 pm gets corroboration from PW-3 Kiran Hazarika. Kiran Hazarika who is the aunt of Latika i.e mother of victim corroborated the fact that victim on the date of occurrence in the evening came to her house for helping her grinding rice. PW-3's evidence justified the visit of the victim to her house. For preparing rice cake which is sold in her tea stall she needed grinding rice on every day and her relatives like victim, her mother and her grand-mother often used to come to her house for helping her in grinding rice. According to Kiran (PW-3) on the day of occurrence also victim came to her house and after grinding rice the victim at about 7 pm left there house towards her own house. The mother of the victim PW-1, Latika Choudhury also was informed by the victim after Latika's arrival on the next day morning about visiting PW-3's house on the previous night for grinding rice and returning at about 7-30 from the house of PW-3.
- 16. The victim narrated that on her way to her house from the house of the PW-3, Kiran in the evening the accused Shiv Charan gagging her mouth dragged her to the nearby field and raped her and at about 1 am the accused fled away leaving her at the place of occurrence. The field where the occurrence happened was at a distance of 1 km away from the road where she was dragged and her mouth was gagged at that particular time. She though tried to save herself while she was dragged yet remained unsuccessful. According to her evidence while the bad works was done with her by the accused at that moment her mouth was

gagged by him by his two hands. To resist him she torn his shirt. However, she could not save herself from the clutch of the accused and her chastity was destroyed by the accused.

- 17. In the instant case, the victim is the lone witness relating to the occurrence of rape. She vividly described the incident of rape committed upon her by the accused. The defence side could not dislodge her evidence in any way in spite of through cross-examination. I find nothing to disbelieve her evidence. As the incident occurred at 1 km distance from the road at night at about 7/7-30 pm so there is no possibility to notice the incident of dragging the victim and commission of rape by any person. As the incident happened at night so there is less chance of using the road at that time by people. The I/O revealed that at a distance of about 500 meter from the place of occurrence there are the houses of people. Usually at 7/7-30 the people of village used to stay inside the house. So it is obvious that none of the locality got the chance to notice the incident. Apart from this as victim did not get the scope to shout at the time of dragging and also at the time of commission of rape, due to gagging of her mouth by the accused hence also matter did not come to the knowledge of anybody.
- 18. The victim's mother informant, PW-1 Latika disclosed that she was not at home on the day of occurrence and went to her matrimonial house Hajo. She returned back on the next day morning. Victim also corroborated the said fact. Victim narrated that she informed her mother the whole incident on the morning of next day. PW-1 Latika, the mother of the victim also supported the fact that she could know from the victim on the next day morning o0f the occurrence that accused committed rape upon her by dragging her to a field while she was returning from the house of PW-3 Kiran. Reporting the matter immediately to the mother while mother returned back in the next morning brings credence to the evidence of the victim.
- 19. Nothing is found why the victim and her mother will falsely implicate the accused. No parents would bring such a false allegation involving the chastity of their own minor daughter without any rhymes or reason. Usually the victim of sexual assault are looked with the eye of hatred in the society and for such stigma there is less scope for getting marriage proposal for the victim in future.

In spite of knowing all these consequences the victim's parents dared to bring the matter to court only to get justice for the wrong done to the chastity of their minor daughter by the accused.

20. In (2008) 1 GLR 111 Hon'ble High Court held in para 17 that:

"The victim of a sexual assault needs no corroboration, for she is not an accomplice. There is, therefore, no impediment in law in founding conviction of an accused on the sole testimony of the victim of rape. Foundation of such conviction on the sole testimony of a victim is possible even if not supported by medical evidence or other evidence on record provided that her testimony inspires confidence of the court and the court is in a position to hold, confidently and boldly, that she is a wholly reliable witness."

21. In case of State of Maharashtra –Vs- Chandraprakash Kewal Chand Jain, reported in (1990) 1 SCC 550 the law was laid down by the Apex Court in this way:-

"A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as it attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required to lend in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix it may looks for evidence which may lend assurance to her testimony short of corroboration required to lend in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

- 22. The evidence of PW-3 Kiran revealed about visit of grand-mother of the victim to her house at night after departure of the victim in search of the victim and that the grand-mother informed her that victim did not return to the house. It is disclosed by PW-3 that everybody searched for the victim but did not find her. Ranjit Choudhury father of the victim who is examined as PW-4 also disclosed about absence of the victim at the house on the night of occurrence and searching for her on the night. So the above evidence of PW-3 and PW-4 corroborated the fact that victim did not reach her house after her departure from the house of PW-3.
- 23. So it is clear that victim did not reach her own house till late night after her departure from the house of PW-3. This portion of the evidence of the father and PW-3 to a certain extent brings credence to the evidence of victim about happening of the incident of rape.
- 24. Though the accused took the plea that he was falsely implicated as he turned down the proposal of the parents of the victim to marry the victim, yet he failed to establish the said fact. No parents will falsely bring such a shameful allegation against the accused involving the chastity of their own minor daughter. It is not at all believable that any parents will lodge a false case against the accused showing his involvement of damaging the chastity of their own daughter. It is not believable that the father of the accused proposed the accused earlier to the occurrence to marry the victim It is not acceptable that only because of the fact that father after the occurrence proposed the accused to marry his daughter and accused turned down the proposal so a false case has been instituted. Chastity of a woman is the most valuable thing and no parents

will bring stigma on the chastity of their own daughter by creating false fabricated story of the rape only to get married the victim with the accused.

- 25. The evidence of the Doctor who examined the victim and the medical report Ext-3 shows that the hymen of the victim was torn at the time of her examination. This brings credence to the testimony of the victim.
- 26. The ejahar Ext-1 and the statement of the victim recorded u/s-164 CrPC fully corroborated the evidence of the victim. Immediately on the next day of occurrence, the ejahar was lodged reflecting the incident of rape. Prompt lodging of the ejahar also brings credibility to the evidence of the victim. The statement u/s-164 CrPC which was given immediately on the next day of occurrence by the victim shows that almost everything regarding the whole incident of rape was vividly described and the said statement corroborated the testimony of the victim in toto.
- 27. The evidence of the victim which is corroborated by the ejahar as well as by her statement u/s-164 CrPC and by the evidence of her related grand-mother PW-3 Kiran and by her parents on material particulars found to be fully reliable.
- 28. Prosecution has well established the fact that on 12/1/16 at night the accused Shiv Charan committed rape upon the victim in a field while she was returning from the house of related grand-mother at night.
- 29. Now let me come to the fact whether the victim was minor at the time of occurrence. The victim disclosed her age as 13 years. The mother of the victim PW-1 also disclosed the age of the victim as 13 years at the time of occurrence. The father of the victim testified that in April 2016 victim completed 14 years. There is no denial in this regard during cross-examination of those witnesses relating to age of the victim. As per the evidence of victim and her mother the victim was studying at class VIII at the relevant time. The medical report Ext-3, the X-Ray report Ext-4 and Doctor's evidence shows that the age of the victim is above 14 years and below 18 years. As per medical jurisprudence there may be two years variation on either side. If her age is above 14 years then her age according to medical jurisprudence with two years variation will be between 12

- to 16. If her age is below 18 years then also her age may come within the age range of below 16 years. The oral evidence of the victim and her parents shows that the age of the victim is above in between 13-14. As there is no denial on the part of defence during cross of these witness regarding the age so I am of the view that it will be proper to accept the age as below 16 years.
- 30. Section 4 of the POCSO Act says about penetrative sexual offence committed upon a child and for committing such offence punishment provided is imprisonment which may extend upto life and fine but not less than 7 years. As per Section 376(2)(i) for committing rape on a woman under 16 years of age the accused will be liable to punish with R/I which shall not be less than 10 years but which may extend to imprisonment for life and fine.
- 31. In view of the above evidence it appears that prosecution has proved a case u/s-376(2)(i) IPC r/w section 4 of the POCSO ACT against the accused Shiv Charan Talukdar beyond reasonable doubt, hence he is convicted u/s-376(2)(i) IPC r/w section 4 of the POCSO Act.
- 32. Heard the accused on the point of sentence. The accused prayed for showing him leniency as he is the only earning member of the family comprising of his mother and sister who are dependent upon him. Considering the submission of the accused I hereby sentenced him to undergo R/I for 10 years and fine of Rs.5000/-, in default of fine S/I for another one month u/s-376(2)(i) IPC. Accused is also sentenced to undergo R/I for 10 years and fine of Rs.5000/-, in default, S/I for another one month under section 4 of the POCSO Act.
- 33. All the sentence will run concurrently.
- 34. The period of detention already undergone by the accused shall be set off against the period of sentence as provided u/s-428 CrPC.
- 35. Furnish a copy of judgment free of cost to the accused.

Send a copy of judgment to the District Magistrate, Nalbari.

Given under my hand and the seal of this court on this the 30^{th} day of September/2016.

Dictated and corrected by me

Session Judge, Nalbari.

Sessions Judge, Nalbari.

D.Roy.

APPENDIX

A. <u>Prosecution witness</u>.

PW-1 Smt.Latika Choudhury.

PW-2 Miss Sikhamoni Choudhury.

PW-3 Smt. Kiran Hazarika.

PW-4 sri Ranjit Choudhury.

PW-5. Dr. (Mrs) Dali Gogoi(M.O)

PW-6 Sri Ajit Das.

B. <u>Defence witness.</u>

Nil.

C. <u>Prosecution Exhibit.</u>

Ext-1 FIR.

Ext-2 Statement u/s-164 CrPC.

Ext-3 Medical report.

Ext-4 X-Ray report.

Ext-5 Sketch map.

Ext-6 Charge-sheet.

D. <u>Defence Exhibit.</u>

Nil.

Sessions Judge, Nalbari.