IN THE COURT OF SESSIONS JUDGECACHAR.

SEPECIAL(POCSO) CASE NO .6of 2015

(U/S.6 of POCSO Act)

Present:-Shri K. Choudhury, LL.M., Sessions Judge, Cachar, Silchar.

State of AssamComplainant. -Versus-**Dulal Das** S/o Late Dinolal Das RongpurSImultal PS Silchar Cachar Assam.....Accused Charge framed on:-21/05/15 P.Ws. examined on:-8/9/15 Statement of accused recorded under section 313 Cr.P.C-.....8/9/15 Judgment pronounced and delivered on:-8/9//15 Counsel Appeared For the State : Mr.S.Dutta, Ld. PP For the Accused : Mr.A.Das,Advocate

<u>JUDGMENT</u>

1. Prosecution case in brief is that on 30/9/13 at about 5 p.m. four and half year of daughter of the complainant herein below stated

as victim was called and taken by the accused to his house and there at she was raped by him. During search hearing call of her grand mother, she responded from inside the house of the accused. The grand mother of the victim then went to the house of the accused and saw the incident. Hearing hue and cry people of the locality arrived and rescued the victim. Accordingly ejhar was lodged by the mother of the victim. The case was registered as Silchar PS case No.2178/13 u/s 342 IPC r/w section 4 of POCSO Act of 2012.During investigation the victim was got medically examined.

- 2. On completion of investigation I/O submitted charge sheet against the accused person u/s 342 and Sec.6 of POCSO Act . On appearance of the accused ld. SDJM furnished copies of all the necessary police papers committed the offence. After hearing both sides and perusal of the materials on the record framed formal charge against the accused person U/S6 of POCSO Act. The charge was read over and explained to which accused person pleaded not guilty. Hence, trial began.
- 3. To prove the case prosecution side has examined as many as three witnesses including victim, of them one is declared hostile. However, the ld PP considering the nature of evidence vide petition no. 550/47 has informed this court that prosecution does not want to examine any further witness. Considering the nature of evidence and hearing both sides I closed the prosecution evidence.

- 4. Defence plea is that victim was not found in the house of the accused. Accused is examined u/s 313 Cr.P.C. He has merely pleaded as innocent.
- 5. Now, point for decisionis that whether the accused committed the offence of sexual assault as punishable u/s 6 of the POCSO Act?
- 6. To decide the above point I have heard ld. counsels of both sides and perused the evidence on the record. My findings and decisions are here in below :-
- 7. PW.1,is the complainant the mother of the victim, she has deposed that about two years back at about 2/2-30 p.m. the alleged incident took place. On that evening when she came home from work came to know from her mother in law that the victim was found missing and subsequently heard crying of the victim in the house of the accused at about 4-30 p.m. He has further deposed that she saw injury mark on the hand of the victim and on suspicion lodge the ejhar against the accused. In the cross examination she has stated that she is an illiterate person and does not know the contents of the FIR and she did not see the occurrence and at the instance of the neighbourer she lodged the case.
- 8. PW.2 the grand mother of the victim deposed that on the date of alleged occurrence at about 4 p.m. the victim went out to play.

Sometimes after that the victim returned to her home on crying and on query the victim she told that out of fear she cried. She denied the statements recorded by the IO that victim was found missing and during search on call of the complainant the victim gave reply from the house of the accused and the victim was found being raped by the accused and on their raising alarm the accused fled away.

- 9. PW.3 is the victim. She is found to be aged about six years. Before recording her evidence she has been put certain questions to test her ineligibility and she has found to have proper understanding to be testified. Her evidence is recorded in camera in presence of her mother but in absence of the accused who is identified by her seeing his photograph taken on mobile camera.
- 10. During her examination she deposed that many years back in one morning she sustained injuries on her hand by fall and at that time her mother and grandmother were in the house. It is observed that the victim kept herself mum on query about any other incident. Subsequently after repeated query she replied that the accused took her to his house and bolted the door. At that time her grand mother called her and on hearing calls accused opened the door when she came out. She has further stated that she had forgotten about any other happenings if any. In the cross examination she has disclosed that she calls the accused as Dada and some times visited his house which is adjacent to their house .

- 11. During argument ld. Counsel for the defence submitted that the visit of the victim is not an unnatural one as accused is her close door neighbour. Further it is submitted that there is no implication both on the part of the PW.1 and PW.2 and also the victim with regard to the alleged charge. It is also submitted that complainant is an illiterate and could not understand what is written in the FIR and according to her she lodged the ejhar at the instance of the neighbouring people and merely on suspicion.
- 12. The previous statement of PW.2 being not confirmed by way of examination of the IO , the non implicating evidence of the PW.2 can be relied upon. She further deposed that she did not see the occurrence. As the alleged victim PW.3 deposed that she has forgotten about anything more about the happening her evidence that accused took her to his house and bolted the door being not supported by any other witnesses under the facts and circumstances of the case can not be considered adversely against the accused. It is seen that the medical report does not reveal any injury on the body of the victim.
- 13. In view of the above it is held that any ingredients of the prosecution allegation is not proved to prove the guilt any offence as charged or whatsoever against the accused. Accused is thus acquitted and set at liberty forth with.

Their bail bonds stand discharged.

Judgment is pronounced and delivered in the open court under my seal and signature on this 8^{th} day **of September**, **2015**.

Dictated and corrected by

Sessions Judge, Cachar

(K.Choudhury)
Sessions Judge,
Cachar,Silchar

Transcribed by K.Bhattacharjee, Stenographer

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR

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APPENDIX

- (A) PROSECUTION WITNESSES: -
- PW 1 –Smti Arati Choudhury
- PW 2 Smti.Radharani Choudhury,
- PW 3 Smti Dipika Choudhury,
- (B) <u>DEFENCE WITNESSES</u>: NIL.
- (C) <u>COURT WITNESSES</u>: NIL.
- (D) PROSECUTION EXHIBITS: -Nil
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: Nil.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

(Shri K. Choudhuy), Sessions Judge, Cachar