IN THE COURT OF SPECIAL JUDGE: CACHAR; SILCHAR SPL. POCSO CASE NO .15 of 2015

(U/S 08 of Special POCSO Act.)
Present:-Shri K. Choudhury, LL.M.,
Special Judge,
Cachar,Silchar.

State of AssamComplainant.
-Versus-
Amulya Das, S/O- Anil Chandra Das, Srikona, Lalmati P.S Silchar, Dist- Cachar
Charge framed on:12.09.16.
P.Ws. examined on: - 16.11.16; 04.02.17; 15.03.17; 10.04.17; 12.05.17; 05.06.17
Statement of accused recorded under section 313 Cr.P.C :- 28.06.17 Argument heard on:13.07.17
Judgment pronounced and delivered on: 21-07-2017
Learned Counsel Appeared
For the State:

<u>JUDGMENT</u>

1. Prosecution case as it evolves from the record is thaton 18.09.2014 at about 8p.m. the accused took the minor daughter of the complainant aged about 13 years, here in below referred as the victim, from the house of Smti Joya Singh at Tarapur by an auto rickshaw, and

on the way near Powergrid, Srikona the accused forcefully outraged her modesty and asked her not to disclose about the incident and, if so disclosed, her parents would face dire consequences. Then on 26.10.2014, the victim, in absence of family members tried to commit suicide by setting fire on herpouring kerosene. Her body got burnt. She was, however, rescued and was admitted to SMCH for treatment. Thereafter, FIR was lodged in Srikona Police Patrol Post and it was forwarded to Silchar P.S. where, it was registered as Silchar P.S. Case No. 3014/14 U/S 354/306/511 of IPC.

- 2. During investigation, statement of the victim got recorded U/S 164 Cr.P.C.IO collected medical report which suggests 40-45% mixed flame burn which was grievous in nature affecting face, neck, trunk, arms and abdomen of the victim. On completion investigation, the IO submitted charge-sheet against the accused U/S 354/342/326 of IPC R/W Section 8 of POCSO Act.
- 3. On production of the accused, this Court after furnishing copies of all necessary police papers to him and hearing both sides, framed formal charge against the accused U/S under Sec.8 of POCSO Act. The charge was read over and explained to the accused to which he pleaded not guilty. Hence, trial began
- 4. To prove the case prosecution examined as many as eleven witnesses including the M.O. and the I.O.Defence pleasare of total denial. During examination U/S 313 Cr.P.C, the accused pleaded as innocent stating the implicating evidence as false. No evidence is however adduced in his defence.

- 5. Now, point for decision is as to whether, under the facts and circumstances of the case, the accused committed any offence of sexual assault upon the victim as charged U/S 8 of POCSO Act.
- 6. To decide the above I have heard learned counsel of both sides at length and perused the entire evidence on record. Findings, decision and reasons thereof are given below:
- 7. P.W.1 Abola Das, the mother of the victim, deposed that about one year prior to the alleged incident the accused took her along with the victim to the house of one Joya Singh for engaging the victim as domestic helper in that house. While the victim was working in the said house, on the date of occurrence, the accused came to that house and reported that the father of the victim was sick and with that information, he took the victim on an auto and was returning towards her house. On the way at about 7 pm, the accused inside the auto by gagging the mouth of the victim sexually assaulted her forcibly near Powergrid, Srikona, and left her (victim) near their house. The victim did not say anything about the incident. After three days, she being ashamed of herself following the incident, set fire on her person. She was recovered by her father and taken to SMCH where she was treated for about 1-1/2 months. During that period, she reported about the incident.
- 8. PW-2 Sri Sudham Das, the father of the victim deposed that he used to work as day labourer and his wife as wage earner. About 2 years back, while the victim was a student of class V, the

accused came to their house and took the victim for engagement in the house of one person of Manipuri Community as domestic helper. During her stay in that house, she used to express to return home and for that he asked the accused to bring her (victim) back. After about one month of work, the accused on such insistence, at one evening, at about 7 pm brought the victim and left her in front of the house of their neighbour Nagar baripoint (tilla) and on reaching home she started crying. She did not utter anything against anybody and after 2-3 days she set fire on herself. He (PW-2) managed to extinguish fire and rescued her. She was then taken to SMCH for treatment where she was treatedfor about one and half months. After treatment, on her return, she reported that on the date of incident, while she was returning from the house of said Manipuri person, the accused in front of the house of one Nag family used force upon her.

- 9. PW-3 Madhumita Das, co-villagers of the accused, deposed that at the material time she was in her matrimonial house and the victim received burnt injuries.
- 10. PW- 4, the victim, deposed that about 2 years back while she was working as domestic helper in the house of Joya Singh near Silchar town, one day at about 8 pm, the accused went there and took her with him with consent of Joya Singh in an auto driven by him. On the way, near Power-grid the accused touched her breast forcibly and threatened her stating that he would not allow any inmates of her house to come to the road and thereafter left her in front of her house. She returned home at about 9 p.m. On query as to why she returned home, she reported she was taken back by the accused, but

she did not disclose about the aforesaid activities of the accused. About 2/3 days after the above incident, she in one afternoon pouring kerosene set fire on her. Seeing the same, her father poured water and rescued her. She was taken to SMCH. She sustained burn injuries over the middle portion of her body including hands, neck and below her cheek. She further deposed that about one month prior to the above incident, she had been engaged as domestic helper by the accused in the house of said Joya Singh. After returning home from SMCH she reported the above activities of the accused to her mother. According to her, for the said activities, she tried to commit suicide. Due to the burnt injuries, her right hand has become shorter and she cannot perform any work as earlier. Exhibit-1 is her statement recorded by Magistrate.

- 11. PW-5, Anil Behari Nag, PW-6 Tapan Kumar Das and PW-7 Jyotirmoy Choudhury are declared hostile by the prosecution. It appears that they are the neighbours of the victim and the accused. They denied their previous statements recorded by the IO with regard to the alleged occurrence of outraging of modesty of the victim by the accused etc.
- 12. PW-8 Dr. Asik Ikbal Mazumder, deposed that on 26.10,2014 at about 4 p.m. he examined the victim girl aged about 14 years as indoor patient bearing Registration No. 569/14. She was discharged on 28.11.2014. Doctor found 42-45% mixed flame burnt over the face, neck, trunk bilateral arms and abdomen. Injuries were caused by flame and grievous in nature. All the injuries were fresh. Exhibit-2 is the medical report.

- 13. PW-9, S. Joya Singha deposed that she knew the accused as auto driver. The victim of this case was brought by the accused to her house in the year 2014 for engaging as domestic helper. The victim accordingly worked for one month. After that in one evening the accused came to her house and requested her to allow the victim to go with him. After that she handed over the victim to him. He took the victim by his auto. After few days, parents of the victim along with the police came to her house and from them she could know about the allegation brought against the accused to the effect that accused attempted to commit rape on the victim and the victim to get rid of the slur wanted to commit suicide setting fire on her with kerosene.
- 14. PW-10, Sajal Kanti Sengupta, IO, according to him, while he was posted at Srikona P.P. on 3.12.2014 receiving the FIR gave GD Entry and forwarded the same to Silchar PS for registration and he took up investigation opening MCD. He visited the PO of the alleged incident. He drew also the sketch map of the second PO of the incident of burn injury. Exhibit-4 is the sketch map of the first PO shown by the victim. Exhibit-5 is the second PO shown by the complainant. He recorded statement of the witnesses. He further deposed that after making several attempts, he could arrest the accused on 23.07.2015. He also seized document of the auto produced by the father of the accused vide Exhibit-7. Thereafter, he was transferred and handed over the CD to OC Silchar PS.

He confirmed the statements brought by the prosecution in the cross examination of hostile witnesses.

15. PW-11 J. Doungen, deposed during his part of

investigation, he collected the injury report and submitted charge sheet.

- 16. During argument, learned PP has submitted that defence by way of cross examination of material witnesses at very length failed to shake out the substance of the prosecution case and also failed to impeach their credibility. Further, it is submitted that evidence are very natural, corroborative and can be relied upon in its face value, disregarding some minor discrepancies here and there. It is further contended that defence has failed to show any reason of false implication by an adolescent girl. On the contrary, learned defence counsel strongly contended that there is no burden on the part of the defence to say any probable reason for any false implication. According to the learned defence counsel, evidences are not convincing enough to believe that the victim was engaged by the accused in the house of PW-9 Joya Singh whom the accused did not know. Further contention is that it is not believable thatany person without knowing or having any acquaintance can hand over any minor girl for domestic work. According to the learned counsel, evidences are exaggerated and improved version and therefore cannot be relied upon.
- 17. It is seen that defence has confirmed some omissions in the cross examination of PW-10 (I.O). The omissions are as follows:
 - a) PW-1 did not state before the IO that she along with the victim were taken to the house of Joya Singh by the accused about one month prior to the alleged incident. The IO however asserted that PW-1 stated that the victim was taken at the advice of the accused.
 - b) PW-1 did not exactly state before the IO that the accused committed sexual assault inside the auto and the accused left

the victim in front of her house.

- c) PW-2 did not exactly state before the IO that while the victim was studying in class V one day the accused came to their house and took the victim to the house of one Manipuri person at Silchar and the victim used to express to return back to her house but it was stated that as per the advice of the accused, she engaged the victim as a maid in the house of Joya Singh at Tarapur.
- d) PW-1 did not exactly state before the IO that accused left the victim near the house of Nag family but it was stated that victim was left in between power grid complex and the homestead of Nag.
- e) PW-2 did not state before the IO that he managed to extinguish fire and rescued the victim.
- f) PW-4 did not state before the IO that the accused left the victim in front of her house by his auto and the accused threatened her stating that accused would not allow her parents or inmates to come on the road but she mentioned about the threatening of dire consequences.
- g) PW-4 did not state before the IO that her father pouring water rescued her.
- h) PW-9 did not state anything disclosing the date, time and year of the engagement of the victim in her house and handing over the victim by the accused.
- 18. Learned defence counsel cited following decisions highlighting some points (1) 1972 CRI. L J. 1286 (V 78 C 331) Supreme Court, Evidence Act 1872 Section 3- Criminal Cases Credibility of

witnesses – Degree of proof. (2) 2011 CRI. L J. 1844 (Gauhati High Court) (Agartala Bench), Evidence Act (1 of 1872) S. 3- Evidence – Conviction based on improved version of witnesses- Not proper. (3) 2011 CRI. L. J. 817 (Gauhati High Court) Evidence Act (1 of 1872) S. 3 – Evidence of prosecution witnesses – Improved version by prosecution witnesses made first time in the Court- Cannot be used for the purpose of conviction of accused. Perused the same. All relates to the appreciation of evidence. Facts and circumstances of the above cited cases are not same with that of the instant case in hand. However, I have taken in to consideration relevant observations for appreciation of evidence on the record.

19. In the instant case, it is evident that both the victim and the accused are of the same locality and there are some hillocks on both sides of their approached road connecting the main National Highway. It is also evident that the victim sustained serious burn injuries. In the cross examination she stated that at the material time, her one brother and three sisters were married, and in their family there were five members including her sister-in-law. In between the period of alleged incident and the incident of burn injury, she was not taken to anybody. She was alone in her house, she did not disclose anything about the alleged incident to any inmates of the house. She all along remained silent. Nobody talked with her. PW-1 in the cross examination stated that although the victim did not say anything about her crying but they did not get her medically examined. However, they got her examined by one kobiraj, who provided taviz, kovoz etc. They thought that the victim was influenced by some unnatural things. The kobiraj was a female and her house was situated near Srikona T.V. Tower i.e. in

the same locality. After three days of the alleged incident, they took the victim to *kobiraj* but the victim did not say anything to the *kobiraj*.

- 20. The above cross examination further assured that the victim did not disclose anything to any inmates of the family or any other about the alleged incident. Some discrepancies are there to the effect that the victim stated that she all along remained in the house whereas her mother (PW-1) stated that she was taken to one kobiraj. Facts remain to be unrebutted that she maintained silence for about 2/3 days after the alleged incident. This silence tends to suggest her state of mind leading her to take the serious decision of committing suicide. It is very natural that in case of such silence, mother of any child would surely take care of the child and would not hesitate to take the child to any person for treatment. Under the facts and circumstances of this case, taking the victim to a *kobiraj* for treatment also seems to be very natural. During examination in chief of the victim, it was noticed by this Court that the witness was very introvert in nature and after repeated query she gave answers. Under such circumstance, non-disclosure of the alleged incident is considered to be very natural for a girl of such introvert in nature. Reaction to any such type of alleged incident by any minor girl would naturally vary from person to person. Here in the instant case, the victim appears to have taken serious steps for selfinflammation. No other reason for taking of such serious step is found in the entire evidence on the record except that she was sexually assaulted.
- 21. PW-9 could identify the accused as auto driver. She asserted that the accused handed over the victim for engagement as

domestic helper in her house. She further asserted in the cross examination that the accused took back the victim and she came to know about the alleged incident from the parents of the victim. The accused merelytermed her evidence as false and also stated that he did not know her (PW-9). It is not at all believable that any unknown person of other locality would depose falsely involving any unknown person for no reason.

- 22. There is no material contradiction or omission. No reason is found for disbelieving the testimonies of the material witnesses. Therefore for the reason cited above, this Court inclined to rely upon the unequivocal, corroborative evidence of the material witnesses in its face value. So, it can rightly be arrived at that the accused at the material time, committed sexual assault as deposed by the victim within the meaning of Section 7 of the POCSO Act.
- 23. In view of the above discussions and entire evidence on the record, it is held that prosecution has been able to prove its case beyond all reasonable doubt U/S 8 of the POCSO Act. Therefore accused is held guilty and convicted accordingly.
- 24. Heard the accused on the question of sentence. His statements are recorded in separate sheet and tagged with the case record. He has prayed for leniency on the ground that he is the only member of his family consisting wife and aged parents. Having due regard to his statements and the sufferings of the victim following his act, this Court convicts and sentence him to undergo R/I (Rigourous Imprisonment) for a period of 3 (three) years along with fine of Rs. 10,000/- (ten

thousand) and I/D he shall further undergo R/I for a period of 2 (two) months. Fine amount if realized shall be paid to the victim as compensation.

- 25. In addition to above compensation, consideration of the seriousness of the burn injuries sustained by the victim for theattempt to commit suicide to get rid of the feeling of insult etc. following the act of sexual assault on her affecting her personal dignity and privacy, and consideration of financial position of her family and loss of her efficacy due to her partial disablement and deformities in her appearance, I am of the view that the victim is required to be sufficiently compensated. Further, it appears that the trauma, pains and sufferings which she has already undergone will follow her throughout her life. Therefore, she also needs to be rehabilitated properly. Having consideration of the above and all other aspects, this Court is of the view that an amount of Rs. 3,00,000/- (Three Lakhs) may be awarded as compensation to be paid by the District Legal Service Authority, Cachar. Secretary DLSA will take appropriate step for payment of the compensation. Copy of the Judgment along with the deposition of P.W.1,2,3,4& 8 be forwarded to Secretary DLSA. Copy of the Judgment also be forwarded to the Secretary, Govt. of Assam, Political Department, for taking necessary step for payment of the compensation.
- 26. Free copy of the Judgment be furnished to the accused as per as per the Provision of Section 363 of Cr.P.C. and a copy also be forwarded to the District Magistrate as per section 365 of Cr.P.C. Copy of the Judgment shall also be forwarded to the S.P., Cachar, Silchar.

27. Bail Bond stands discharged.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 21st day of July, 2017.

Dictated & Corrected by me

(Shri K. Choudhury), Special Judge. Cachar, Silchar. (Shri K. Choudhury), Special Judge, Cachar, Silchar.

Transcribed by

D. Paul. Stenographer Gr. III.

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR SPL POCSO Case No. 15 of 2015. APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 - Abola Das

P.W. 2 - Sudham Das.

P.W. 3 – Madumita Das.

P.W. 4 – Rajabala Das.

P.W. 5 – Anil Behari Nag.

P.W. 6 – Tapan Kumar Das

P.W. 7 – Jyotirmoy Choudhury P.W. 8 – Dr. AsikIkbalMazumder

P.W. 9 - S. JoyaSingha

P.W. 11 - SajalKantiSengupta

P.W. 12 – JangkhojuonDoungen.

(B) <u>DEFENCE WITNESSES</u>: -

(C) PROSECUTION EXHIBITS: -

Ext.1 Statement

Ext.1(1)& 1(2) Signatures of P.W.4 - Medical Report. Ext. 2 Signatures of PW 8. Ext-2(1)

- FIR Ext.3

Ext. 3(1) Signatures of P.W.10

Ext. 3(2) Signatures of the then OC

Ext. 4 Sketch Map

 Signature of P.W. 10. Ext.4(1) Sketch map of P.O. No. 2 Ext. 5 Signatures of P.W.10 Ext. 5(1)

Ext. 6 Arrest Memo. Ext. 7 Seizure List.

Ext. 7(1) Signatures of P.W.10

 Signatures of father of accused. Ext. 7(2)

Ext. 8 Charge Sheet. Ext. 8(1) – Signaturesof P.W.11

- (E) <u>DEFENCE EXHIBITS</u>: NIL (F) <u>COURT EXHIBITS</u>: NIL
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

(Shri K. Choudhury), Special Judge, Cachar, Silchar.