IN THE COURT OF THE SPECIAL JUDGE SONITPUR :: TEZPUR

Special (POCSO) Case No. 01 of 2014.

GR Case No. 4031/13

(Section 6 of the Special POCSO Act, 2012) State of Assam

- Versus -

Sri Subhash Sen and Sri Kusheswar Saikia

Present : Mr. P.J. Saikia, AJS,

Special Judge, Sonitpur, Tezpur.

Appearance:

For the State : Mr. H.P .Sedai,

Public Prosecutor.

For the accused : Mr. S.E. Alam, Sr.Advocate.

Date of evidence : 09-07-2015, 07-08-2015

& 02-06-2016.

Date of argument : 02-06-2016

Date of judgment : 02-06-2016

J U D G M E N T

1. This is a case under the Protection of Child from Sexual Offences Act, 2012 (POCSO Act in short).

The Prosecution case.

- 2. The prosecutrix was about thirteen years old at the time of occurrence. The accused Subhash Sen is her paternal uncle. The prosecutrix used to stay in the house of the accused Subhash Sen. It is alleged that while she was staying in the house of Subhash Sen he had illicit sexual intercourse with the prosecutrix. The first incident took place on 15-02-2013. The prosecutrix did not disclose the matter to anyone because she was allegedly threatened of dire consequence if she disclosed the matter to anyone else. Thereafter, Subhash Sen continued to have sexual intercourse with the prosecutrix regularly. Sometimes later the other accused Kusheswar Saikia also joined in. Both of them induced the prosecutrix to procure her consent for sexual intercourse. Finally, one day the prosecutrix started to develop pain in her stomach. She was taken to the hospital and at that time, the doctor disclosed that the prosecutrix was actually pregnant and the time of delivery was near. Thereafter, on 10-011-2013 the prosecutrix gave birth to a still born baby.
- **3.** The mother of the prosecutrix has lodged a complaint case in the Court of the Chief Judicial Magistrate, Sonitpur, Tezpur alleging the aforesaid facts. The said complaint was forwarded to police for registration of the case and thus this case came into being.
- **4.** During the period of investigation, the victim girl was produced before a Magistrate for recording her statement u/s 164 Cr.P.C. wherein she has supported the aforesaid facts. The victim was also

subjected to the medical examination. The Doctor who examined the victim during the investigation period has reported that from physical examination and from USG findings it was not possible to ascertain whether the prosecutrix had delivered a baby on 10-11-2013.

Points for determination.

- **5.** The points for determination in this trial are as to
 - (i) Whether the accuseds, in furtherance of their common intention, had committed rape upon the prosecutrix?
 - (ii) Whether the accuseds, in furtherance of their common intention, had committed aggravated penetrative sexual intercourse upon the prosecutrix? And
 - (iii) Whether the accuseds, in furtherance of their common intention, criminally intimidated the prosecutrix?

Decision and Reasons thereof

- **6.** In this case, the Investigating Officer has cited nine witnesses, out of whom, three are official witnesses. During the trial of the case, the prosecution side has examined as many as eight witnesses.
- 7. I shall take up the evidence of the prosecutrix first. She has stated before the Prosecution counsel that while she was staying in the house of Subhash Sen, she developed relationship with a boy named Parimal who stayed near the house of Subhash Sen. She has stated that she had physical relationship with Parimal and accordingly, she became pregnant and on November, 13th she delivered a still born

baby. She has proved her statement recorded u/s 313 Cr.P.C. vide Ext. 1.

- **8.** Now, I shall take up the evidence of the informant. She being the mother of the prosecutrix, has stated that at the relevant time of occurrence her daughter had missed her menstrual circle and started to have pain in the stomach. The informant gave her daughter pain killer tablets. Thereafter, as the pain did not subside she took her daughter to the hospital and the doctor informed her that the prosecutrix was pregnant. Finally, in the hospital the prosecutrix delivered a dead baby.
- **9.** The informant has stated before the defence counsel that her daughter, the prosecutrix had love affairs with a boy named Parimal who stayed near the house of Subhash Sen. The informant has stated that the villagers put pressure on her to file the case against the present two accused persons.
- **10.** Similarly, the prosecutrix herself has stated before the defence counsel that the villagers put pressure upon her and her mother to file this case. She has also disclosed that she gave the statement Ext. 1 under pressure from the villagers.
- **11.** Now, at this stage, I find that the evidence of the rest of the witnesses have become irrelevant. Without any discussion on this point, I have reasons to hold that the charges brought against the accuseds have not been proved at all in this case.

ORDER

12. That being the position, the accused Subhash Sen and Kusheswar Saikia are found not guilty and they are acquitted from this case.

Given under my hand and seal of this Court on this 2^{nd} day of June, 2016.

(P.J.Saikia) Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(P.J. Saikia) Special Judge, Sonitpur, Tezpur.

Typed by me.

(R. Hazarika), Steno.

APPENDIX

Prosecution witnesses:

P.W.1 -	Victim
P.W.2 -	Smti Jyoti Sen, informant
P.W. 3 -	Sri Jagadish Sen,
P.W. 4 -	M.O.
P.W. 5 -	Sri Nikhil Chandra Paul,
P.W. 6 -	Smt. Mahamaya Das,
P.W. 7 -	Smt. Hiran Saikia,
P.W. 8 -	Md. Omar Faruk, I.O.

Defence witnesses

NIL

Prosecution Exhibit

Ext.1	-	164 Cr.P.C. statement of the victim.
Ext.2	-	complaint.
Ext.3	-	Medical report.
Ext.4	-	advice slip
Ext.5	-	Vaginal smear reports.
Ext.6	-	Urine for HCG test report
Ext.7	-	X-ray and USG reports
Ext.8	-	Charge sheet.

Defence Exhibits

<u>Defence Exhibits</u> -

NIL

(P.J. Saikia) Special Judge Sonitpur, Tezpur.