IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

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

Spl. (P) Case No. 49 of 2017 U/S 6 of POCSO Act. (Arising out of Nazira P.S. Case No. 177/2017)

State of Assam

-Vs-

Sri Raju Chetry Accused

APPEARANCE:

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

For the accused : Mr. Dipak Dutta, Advocate

Date of framing Charge : 17.11.2017
Dates of Evidence : 08.12.2017
Date of Argument : 08.12.2017
Date of Judgment : 08.12.2017

JUDGMENT

- 1. Prosecution case, in brief, is that on 20.09.2017, one Smt. Lakshmi Bagti lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, accused Raju Chetry forcibly committed rape on her 16 years old daughter victim 'B' (name withheld) for which victim conceived and presently she is carrying seven months pregnancy.
- 2. On this FIR, Nazira PS Case No. 177/2017, U/S 376(2)(i) IPC, R/W Section 4 of POCSO Act, 2012 was registered and started investigation. During investigation, accused was arrested and produced him before this court for judicial custody. Victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C.

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 376 (2)(i)IPC R/W Section 4 of POCSO Act, 2012.
- 4. Upon receipt of charge, sheet, copy was furnished to the accused. After hearing both the sides, vide order dated 17.11.2017, charge U/S 6 of POCSO Act, 2012 has been framed against accused Raju Chetry to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses including the informant and the victim.
- 5. Examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material found against the accused for the alleged offence in the evidence of informant and victim. Considering nature of the evidence, I propose to dispose the case by applying powers u/s 232 Cr.P.C without calling the accused to enter into defence.
- 6. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. Dipak Dutta, learned defence counsel and gone through the record. I have considered the submission of both the sides.

POINT FOR DETERMINATION IS -

7. (i) Whether prior to one year of filing FIR on 05.10.2017, accused has committed aggravated penetrative sexual assault on the victim 'B' and was responsible pregnancy of the victim?

DECISION AND REASONS THEREOF

8. PW-1 Smt. Lakshmi Bagti, the informant and mother of the victim in her deposed that accused Raju Chery is her son in law. He married her eldest daughter. Victim B is her third daughter. On knowing that victim was pregnant for about 5 month, she sent her at the residence of accused for her delivery. On asking, victim did not disclose about the person responsible for her pregnancy. On becoming the matter public, under pressure from villagers, she lodged the FIR. At the relevant time, victim was aged about 17 years. About 12 days back, victim delivered one female child at Joysagar Hospital. In her cross-examination PW 1 admitted that she cannot say about the contents of the FIR

or the name of scribe. Victim did not disclose the name of her boy friend. Due to pressure created by villagers, this case was filed. She do not want to proceed further with this case.

- 9. PW-2 Victim B in her evidence deposed that she read upto class IX. 13 days back, she delivered one female child. The boy through whom she was pregnant, has left the village. While she was pregnant for about 5-6 months, she informed the matter to her mother and on this, her mother sent her to the residence of accused for delivery. On becoming the matter public, under pressure from villagers, her mother lodged the FIR. She also deposed that to save herself from public outrage, she falsely took the name of accused as responsible for her pregnancy. In her cross-examination she admitted that accused Raju Chetry never made any physical relation with her. He was not responsible for her pregnancy.
- 10. From the evidence of P.W. 1 and P.W. 2 it is seen that none of them deposed anything against the accused implicating him with the alleged offence. P.W. 1 being the mother of the victim deposed that on knowing that her daughter victim 'B' was pregnancy for about five months, she sent the victim to the residence of accused for her delivery. From her evidence it also depicts that victim did not disclose the name of the person responsible for her pregnancy. It is also in the evidence that on becoming the matter public, under pressure from villagers, PW 1 lodged the FIR. PW 1 admitted that she also did not disclose the name of her boy friend. P.W. 2 the victim admitted that to save herself from public outrage, her mother lodged the FIR implicating the accused. In her cross she clearly deposed that accused Raju Chetry never made any physical relation with her and he was not responsible for her pregnancy.
- 11. So from the evidence on record, it is seen that accused was falsely implicated in this case by the victim just to save herself from the public outrage. On the contrary, her evidence reflects that she got pregnant through a boy who has already left their village. The admitted that fact that few days back, the victim delivered one child, though confirmed the fact the victim was subjected

to penetrative sexual assault, but the accused cannot be held responsible for the same.

- 12. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 6 of POCSO Act against the accused Sri Raju Chetry. As such, accused Raju Chetry is acquitted from the charge U/S 6 of POCSO Act, 2012 and set at liberty forthwith.
- 13. Issue release order to the Jail Supdt. of District Jail, Sivasagar forthwith.
- 14. As the accused was in Jail custody, no order is passed U/S 437 A Cr.P.C.
- 15. Considering the nature of the case, the matter is not referred 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. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 8th day of December 2017 at Sivasagar.

Special Judge <u>Sivasagar</u>

<u>APPENDIX</u>

- 1. Prosecution witnesses:
 - P.W. 1 Smt. Lakshmi Bagti (Informant)

P.W. 2 - (Victim)

- 2. <u>Defence witnesses</u> None
- 3. Court witnesses None
- 4. Exhibits by prosecution None

Special Judge, Sivasagar