IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl.(POCSO) Case No.1 of 2017

(U/S:376(2)(i) I.P.C. R/W Sec.4 of POCSO Act).

State Versus

Mozahar Ali @ Roon S/O: Md. Nurul Islam Vill: Muslimghopa

PS: Sipajhar, Dist-Darrang

-Accused.

PRESENT: Sri P.Saikia,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

For the Prosecution: Sri P.Sarma, P.P., Mangaldai

AND

For the accused : Mirja Gias, Advocate.

Evidence recorded on :12/05/17, 28/07/17,04/09/17,24/10/17

14/11/2017.

Argument heard on : 07/12/2017

Judgment delivered on: 19/12/2017.

JUDGMENT.

- 1. The prosecution case, in a nut shell is that on 30/07/14 the informant Md. Astab Ali lodged an FIR with the Sipajhar Police Station stating amongst—other that on 30/07/2014 at around 12 p.m. the accused Harun alias Roon induced his victim daughter(herein after referred to as victim withhelding her real names) to see T.V. In his room at that time committed rape on her. When the victim cried for help then his wife hearing her cry came to the house of the accused. She saw the accused was grabbing his daughter. On seeing her the accused fled away and his victim daugher narrated about the incident of committing rape on her daughter by the accused Harun alias Roon Ali.
- 2. Having received the FIR O/C, Sipajhar P.S. registered a case vide Sipajhar PS case No.420/14 U/S 376(1) IPC read with Section 6 of POCSO Act and took up of the investigation by him. During the course of investigation the I.O. visited the place of occurrence, recorded the statement of the witnesses U/S 161 Cr.P.C., sent the victim for medical examination. The I.O. also got her statement recorded U/S 164 Cr.P.C. and also procured medical examination report and drew sketch map of the place of occurrence. On conclusion of the investigation the accused was charge sheeted U/S 376(2)(i)IPC read with Section 6 of the POCSO Act to face trial.
- 3. The learned Additional C.J.M., Darrang, Mangaldai took cognizance of the offence and having found the offence U/S 376(2) IPC read with Section 6 of POCSO Act exclusively triable by the Cvourt of Sessions committed the case to this court of Sessions U/S 209 Cr.P.C. after ensuring the presence of the accused.
- 4. On commitment of the case with all relevant papers and upon perusal of Police document U/S 173 Cr.P.C. along with the entire materials on record my learned predecessor in Office having found prima facie

material framed charge against the accused Mozahar Ali alias Roon U/S 376(2)(i) of IPC read with Section 4 of POCSO Act and the same on being read over and explained to the accused to which he pleaded not guilty and claimed for trial.

- 5. In order to butress the charges the prosecution has examined as many as 6 witnesses including the informant, victim and the M.O. Of the case. The prosecution has also relied on some documents brought on record as exhibits.
- 6. On closure of the prosecution evidence the accused was examined U/S 313 Cr.P.C.. He has taken a plea of complete denial and declined to adduce evidence for his defence.
- 7. Situated thus, the point for determination in the present case at hand is set up and framed as follows:
 - (i)Whether the accused on 30/07/14 at 12 a.m. at Muslimghopa(Hajichuba) under Sipajhar PS forcefully committed rape on Miss Parbin Sultana aged about 8 years daughter of complainant Md. Astab Ali as a result she sustained injury on her private part, as alleged U/S 376(2)(i) I.P.C. R/W Section 4 of POCSO Act?
- 8. I have heard argument advanced by the learned counsel of both the sides and also have evaluated evidence on record against the afore charge in its entirety.

DISCUSSION, DECISOON AND REASONS THEREOF

9. PW1 Md.Astaf Ali is the first informant of the case. He has testified to the effect that the accused is known to him and the victim is his daughter who is presently 11 years old. At the time of the incident his daughter was 7 years old. On 30/07/12 at 12 noon on a Wednesday the accused

had called his victim daughter to watch T.V. His daughter went there. Accused removed her half pent and committed sexual intercourse with his her. When her victim daughter raised alarm his wife came searching for his daughter and inside the house of the accused found the accused holding his daughter with both hands. Seeing his wife the accused fled away by the back side door. He was informed about the incident and reached at 2 p.m. from his work. His wife narrated the fact to him and on the basis of which he lodged the FIR. Ext.1 is the FIR, wherein ext.1(1) is his signature.

- 10.In cross examination, he has revealed that he was not present at his home when the incident occured. His wife narrated him about the incident. On the next day of the incident he lodged the FIR.
- 11.PW2 is Moinul Hoque. He has stated in his chief examination that he did not witness the incident. Therefore, he does not know about the incident. His cross examination is declined.
- 12.PW3 Manika Begum is the mother of the victim. It is her evidence that about two years ago at about 12.00 noon she was at her home and her daughter went to watch T.V. in the home of the accused which is situated adjacent to her house. At that time she heard hue and cry of her daughter. On hearing her cry she went to the house of the accused and she saw that the accused by catching hold of the hands of her daughter shook her for which he cried and seeing this incident she snatched away her daughter from the custody of the accused and brought her to her house.
- 13. After declaring her as hostile at this stage she has divulged the hostile part as stated by the prosecution was not stated by her before the Police U/S 161 Cr.P.C.

- 14.In cross examination, she has stated that the T.V. Room in the house of the accused where her daughter was watching TV is in the west of the other room belonging to the accused person. Both the rooms are intervened only by one door. When she proceeded to the house of the accused at that time the doors of the house were opened. After crossing the first room she directly went to the room where her daughter was watching T.V. When she proceeded to the house of the accused she saw two other persons who were having tea in the first room in the house of the accused and brother of the accused was working in front of the room. She has also stated that she had not stated before the Police as recorded U/S 161 Cr.P.C. Her daughter did not tell her regarding commission of rape by the accused. On the next day when she asked her daughter she told her daughter that the accused in order to scare her in playful manner shook her body and out of fear she screamed loudly. Except this no incident occured to her daughter.
- 15.PW4 is the victim. Her testimony does not support the material version of the prosecution. She has stated to the effect that about two years ago one day at about 12 noon she was playing alone in front of her courtyard of her house. Then she decided to go to the house of the accused to watch T.V. serial "Bharaghar". At that time the mother and sister were also present along with the accused. While she was watching T.V. with the mother and sister of the accused at that time the accused was not there. Afterwards the accused came to the room stealthily and scared her from rear and out of fear she screamed loudly. Hearing her scream her mother came to the house of the accused and took her away. She has stated that Police got recorded her statement U/S 164 Cr.P.C. and ext.2(1) and 2(2) are her signatures.
- 16.In cross examination, she has stated that at the time of the incident the accused did not remover her pent to commit sexual intercourse with her

nor he touched on her private part. She stated in ext.2 as tutored by one old woman who resides adjacent to their house.

- 17.PW5 is the I.O. of the case. It is his evidence that on 31/07/14 he was posted as O/C, Sipajhar P.S. On that day the informant Astab Ali lodged the FIR and he being the O/C of the Sipajhar PS registered a case on the basis of the FIR being Sipajhar PS case No.420/14 U/S 377(2)(i) IPC read with Section 6 of POCSO Act and took up investigation by himself. After completion of the investigation the accused was charge sheeted U/S 376(2)(i) IPC read with Section 6 of POCSO Act against the accused Mozahar Ali alias Roon as absconder. He has proved and marked the sketch map as ext.3 and ext.4 is the charge sheet and ext.1 is the FIR, wherein ext.1(2) is his signature. His cross examination was declined by the defence.
- 18.PW6 is Dr. Bidyabati Hazarika who examined the victim on 31/07/14 in connection with this case and as per her remarks she found no injury mark in her private parts. Nor did she found bleeding on private part of the victim at the time of examination. She did not find spermatozoa and molestation alleged by the victim. She has proved her medical report as ext.5 wherein ext.5(1) is her signature.
- 19.In cross examination, she has revealed that she did not see x-ray plate as regards to ossification test conducted on the victim before the court though victim stated her age as 8 years old.
- 20. From the above discussed evidence on record, it is manifest that except the victim(PW4) there is no eye witnesses to the occurrence. Hence, the evidence of the prosecutrix(PW4) is vital to bring the charge of alleged molestation by the accused to the hilt.

- 21.On assessment of the evidence of PW4(victim), it is manifest that she has not supported the prosecution case at all. She has completely denied that the accused on the date of the incident while she was watching T.V. at his house either committed rape on her nor did he touch on her private part. It is her evidence that on the day of the occurrence at 12 noon she came to the house of the accused situated adjacent to their house to watch Assamese serial "Bharaghar". At that time she was watching the serial. At that time the mother and sister of the accused were also present along with the accused. But the accused though in the house was not there. Afterwards the accused came to the room surreptitiously and scared her from rear and out of fear she screamed loudly. On hearing her scream, her mother came and took her to their house. She has further revealed in cross examination that she stated before the Magistrate in her statement 164 Cr.P.C. statement ext.2 as tutored by one old woman who resides adjacent to their house.
- 22. Thus, it is amply evident that PW4 in spite of being the victim of alleged molestation has totally backtracked from the core of the prosecution case. Her evidence does not at all support that she was molested by the accused on the date of the occurrence. Rather, she has given a clean sheet by disclosing that the accused neither committed sexual intercourse with her nor did he touch private part of the victim while she was watching T.V. serial in the house of the accused along with his mother and sister. However, the testimony of the victim(PW4) is found to be completely contradictory to her statement recorded U/S 164 Cr.P.C. In the face of incoherent and irreconcilable evidence to the material particulars of the case as adduced by the victim(PW4) her 164 Cr.P.C. statement not being the substantive evidence cannot be accepted to bring home the charge against the accused so much so that the victim in her cross examination has revealed that she gave her statement U/S 164 Cr.P.C. on being tutored by one old lady resides adjacent to their home.

23. The medical evidence of the Medical Officer(PW6) who examined the victim has also ruled out commission of rape on the victim as she found no injury on the private part of the victim nor did she find bleeding of the victim at the time of examination on her private part.

the victim at the time of examination on her private part.

24.It is also apposite to mention that the other evidence of the independent witness PW1, father of the victim and PW3(mother) are found to be hearsay one. Their evidence has nothing to lend credence to the prosecution case when the victim(PW4) herself has adduced no iota of

implicating evidence that she was sexually molested by the accused.

25.In view of what has been said and discussed above, I am of the firm opinion that there is no reliable and legally admissible evidence to bring home the charge levelled against the accused. Hence, the prosecution

case is disbelieved.

26.In the result, I am constrained to hold that the accused Mozahar Ali @ Roon is not guilty U/S 376(2)(i) I.P.C. read with Section 4 of POCSO Act.

He is acquitted and set him at liberty forthwith.

27.Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this court this 19th day of December, 2017.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Sessions Judge, Darrang,Mangaldai

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

A)Prosecution witnesses:

i)PW1 Astaf Ali ii)PW2 Moinul Hoque iii)PW3 Manika Begum iv)PW4 Parbin Sultana v)PW5 Dimbeswar Thakuria vi)PW6 Dr. Vidyawati Hazarika

B)Defence witness: Nil

C)Exhibits:

i)Ext.1,FIR ii)Ext.2 statement of victim iii)Ext.3 sketch map iv)Ext.4 Charge sheet v)Ext.5 Medical report.

> Sessions Judge Darrang,Mangaldai.