IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

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

Special (P) Case No. 36 of 2016 U/S 8 of POCSO Act (Arising out of Sapekhati P.S. Case No. 76/2016)

State of Assam

-Vs-

Sri Siva Gogoi Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P.P. For the accused : Mr. D.K. Gohain,

State Defence Counsel

Date of framing Charge : 13.12.2016

Dates of Evidence : 06.03.1017, 28.04.2017, 22.06.2017.

 Date of S/D
 : 01.07.2017

 Date of Argument
 : 17.08.2017

 Date of Judgment
 : 31.08.2017

J U D G M E N T

- 1. The prosecution case, in brief, is that on 23.08.2016 Smti. Karuna Gogoi lodged an FIR with O/C Sapekhati Police Station alleging inter alia that on 21.08.2016 at about 3 p.m. while her minor daughter, Victim B, (name withheld) aged about 6 years was playing with her friend, accused Siva Gogoi by enticing the victim in the name of giving some foods took her to his orchard and attempted to commit rape with the victim. On making hue and cry, the neighbouring people apprehended the accused but he managed to flee away.
- 2. On this FIR, Sapekhati P.S. Case No. 76/16 U/S 18 of POCSO Act was registered and investigated into. During investigation, accused was Special (P) Case No. 36 of 2016

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arrested and produced him before the court for judicial custody. The victim was medically examined and got her statement recorded in Court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 18 of POCSO Act.

- 3. On receipt of the charge-sheet and on appearance of the accused, vide order dated 13.12.2016, my learned predecessor in office has framed charge U/S 8 of POCSO Act against the above named accused person to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined as many as eight witnesses including I.O.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence, when he was called upon to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. D.K. Gohain, learned state defence counsel and gone through the evidence and documents. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE -

6. (i) Whether on 21.08.2016, at about 3 p.m. accused Siva Gogoi committed sexual assault with the victim B and thereby make himself liable for punishable offence U/S 8 of POCSO Act?

DECISION AND REASONS THEREOF:

7. PW-1 Smt. Purna Gogoi, mother of the victim in her evidence deposed that on 21.08.2016, at evening hours while she was at her residence, her daughter Victim B has returned form play and told her that accused Shiva Gogoi after giving her Maggi, took her to nearby low laying place and after laying her on the ground, open her panty and kept her pressed for a long. On knowing this, she asked the accused about the incident but the accused has assaulted her by throwing a stone which hit on her shoulder. Immediately she informed the matter to co-villager Riju Phukan, Gaonburah and others. On the Special (P) Case No. 36 of 2016

next day police came to their village as some of villager informed police. She lodged the FIR at Police station. Exbt. 1 is her FIR. In her cross-examination, she admitted that accused used to rebuke on peoples. Place of incident is on the orchid of the accused. Accused used to reside with his other brothers and their family members. She denied that that prior to the incident, she had some quarrel with the accused. Accused used to pelt stone on the residence of the locality. Due to committing misbehave with the villagers, none of the village likes him. She admitted that in the FIR or in the statement to police she did not mention that "accused Shiva Gogoi after giving her Maggi, took her to nearby down place and after laying her on the ground, open her panty, kept her pressed for a long, that on knowing this, she asked the accused and than the accused has assaulted her by throwing a stone." She denied that on previous grudge of pelting stone, she has falsely implicated the accused with false allegation.

- 8. PW-2 the minor victim B in her evidence deposed that on the date of incident, after returning from school, she went to play with Baby, Mantu and Santanu. Therefrom accused Siva Gogoi took her to back side, opened her pant and his pant, touched his susu (penis) to her susu (vagina). On getting pain, she cried. Her friends followed her while accused took her with him. Her friends saw the incident. She returned home and inform her mother and she slapped her. In her cross-examination she admitted that before Sonari Court, she stated that accused has opened his pant and shown his SUSU to her. Accused gave her some vegetable she thrown the same on the date of incident. Her mother slapped her as to why she had taken the vegetable from Siva. On this incident, there was a quarrel between her mother and accused. After this quarrel, local peoples came there. She denied to has deposed on being tutored.
- 9. PW-3 Miss Devi Gogoi @ Saru Mi, a student of Class V and friend of the victim and granddaughter of the accused, in her evidence deposed that on the date of incident, while she was playing with victim and others, accused Siva Gogoi called her but she refused. On this, Siva Gogoi by opening his pant

showed his susu to her. On this they returned home and went to orchid to bring some potato. While victim went to pluck bamboo leaves, accused Siva went there and committed mid deed with victim by opening her pant. She had seen the incident. On seeing her, accused Siva left her. Thereafter she returned home and told the incident to her brother Mantu who in turn informed the matter to one Rita. Rita told the matter to the mother of victim. Victim was also assaulted by her mother. In her cross-examination she denied that while giving statement to police, she had not stated that accused Siva Gogoi called Babita but she refused; that on this, Siva Gogoi by opening his pant showed his susu to her. She admitted that they went for collecting potato in the orchid of accused Siva. She denied that for this act, accused has scolded and chased them. She also denied that on chasing by accused they complained the matter to the mother of victim. Accused has given some potato to victim but the mother of Babita did not keep those and scolded her. They have collected and bring few potato from the orchid of accused. Accused has also thrown a stone which hit mother of victim.

- 10. PW-4 Smt. Rita Gogoi in her evidence deposed that on 21.08.2016, at evening hours Debi told her that accused Shiva Gogoi has committed misdeed with victim B. On knowing this, she informed the incident to mother of victim. Purna Gogoi assembled co-villagers. On the same day, police came to their village and asked her about the incident. In her cross-examination she admitted that she has not seen any of the incident with victim. She has seen a quarrel between Siva and Purna. She denied to had deposed falsely on being tutored by Purna and Durlov.
- 11. PW-5 Sri Durlov Gogoi, father of the victim B, in her evidence deposed that victim is aged about about 6 years and she is reading in class I. On the next day of the incident, his wife Purna Gogoi informed him that accused Siva has committed rape on his daughter. On asking victim, she told him that accused Shiva Gogoi has opened her pant and touched his susu to her susu. This matter was informed to police. In his cross-examination he stated

that he had no knowledge that on the day of alleged incident, his daughter along with Debi, Babita and Mantu committed theft of Potato from the orchard of accused Siva. Accused Siva Gogoi used to make quarrel with them since last two years of this incident. As such they did not maintain any relation with Siva. He has not any injury marks on his daughter. After the incident, he has seen his daughter with normal behaviour.

- 12. PW-6 Sri Riju Phukanin his evidence deposed that on the next day of the incident, one Debi Gogoi, friend of the victim told him that on the back side of his residence, accused Siva Gogoi grabbed and committed misdeed with victim. He did not inquire about the incident from the victim. In his cross-examination he admitted that while giving statement to police he had not stated that as deposed in court. Residence of Siva Gogoi was at Rangdhali Gaon. His residence is at a distance of about 3½ KM from the house of accused.
- 13. PW-7 Sri Ananta Gogoiin his evidence deposed that on the next day of the incident, neighbouring people of the victim, told him that on the back side of his residence, accused Siva Gogoi grabbed and committed misdeed with victim. On knowing this, he did not inquire about the incident from victim. In his cross-examination he admitted that he heard about the incident while local villagers were talking about the matter.
- 14. PW-8 SI Anil Moran, the I/O of this case, in his evidence deposed that during investigation he went to the place of occurrence i.e. residence of accused Siva Gogoi at Rangdhali Gaon and drawn a sketch map of the PO. Exbt. 2 is the said sketch map. Accused was found missing in his residence. Victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. During investigation, he has collected the medical report and statement given by victim in court. Exbt. 3 is the statement given by the victim in court. Exbt. 4 is the medical report. From the medical report it appears that no external injury was found on the victim. On completion of investigation, he has submitted charge sheet against the accused u/s 18 POCSO

Act. Exbt. 5 is the charge sheet. In his cross-examination he deposed that as per FIR date of occurrence is shown as 21.08.2016. FIR was lodged on 23.08.2016. There was no mention of cause of delay in filling the FIR. He has not questioned the informant to record the cause of delay. Victim was medically examination at Sapekhati Hospital. In Exbt. 4, medical report, there was no mention of age of the victim. He has not collected the age proof document of the victim. In the FIR on in the 164 Cr.P.C, no allegation was levelled regarding penetrative sexual assault by the accused. Witness Purna Gogoi in her statement before him did not state that "accused Shiva Gogoi after giving her Maggi, took victim to nearby down place, that on being asked, the accused has assaulted her by throwing a stone on her which hit her on my shoulder."

- From the above evidence, particularly looking at the evidence of 15. PW. 2 the victim it appears that she has stated that accused took her to back side, opened of her pant and his pant, touched his penis to her vagina. On getting pain she cried. She also deposed that her friends followed her while the accused took her with him and her friends have seen the incident. In her cross she admitted that while giving statement in Sonari Court she has stated that the accused has opened his pant and shown his Susu to her. She denied that she deposed as tutored. Having found contradictions in examination-in-chief and her admission in cross-examination, on looking the evidence of the victim given U/S 164 Cr.P.C. which was proved as Ext. 3 through the I.O., it appears that on 24th August 2016, i.e. on the 3rd day of incident she gave her statement at Sonari Court and she categorically stated that accused called her on the back side of his house and after opening his pant he shown his Susu (Penis) to her. Further she stated that except this accused did nothing. So from the above evidence, it appears that the evidence given by the victim in her examination-in-chief is exaggerated then her previous statement given U/S 164 Cr.P.C. This makes the evidence of P.W. 2, victim doubtful.
- 16. The above finding reinforced when we look at the evidence of P.W. 3, friend of victim. In her evidence she stated that while she was playing with

the victim and her younger brother Mantu, accused Siva Gogoi called Bobita and on her refusal Siva Gogoi opened his pant and shown his Susu to her. This part of evidence was not supported by the victim in her examination-in-chief. P.W. 3 however, in the second part of her evidence has stated that while victim went to pluck Bamboo leaves, accused Siva went there and committed misdeed with her by opening her pant. On seeing her accused Siva left her. As per victim she was taken by the accused but as per P.W. 3 while victim went to orchid by the accused, he went there and committed mis-deed. P.W. 3 is silent regarding opening of the pant by the accused which was stated by the victim. Thus it appears that she has also contradicted the victim regarding taking of the victim to back side, opening of pant by both victim and the accused, touching of penis to vagina.

17. From the evidence of P.W. 1, 4, 5, 6 & 7 it appears that all are hearsay witness. Though they have stated regarding commission of misdeed by the accused, but on a careful reading, it appears that the fact got exaggerated. P.W. 1, the informant and mother of the victim has brought the story giving of Maggi by the accused and taking of the victim to nearby down place, laying the victim on the ground which the victim did not depose in Court or in 164 Cr.P.C. In her cross the victim has admitted that accused used to rebukes on people of the locality and due to committing misbehaved with the villagers, none of the villagers likes him. The other part of the evidence regarding asking of the accused she has not stated the majority facts. From the evidence of P.W.1, it appears that the victim and P.W. 3 went to the orchid of accused for collecting potato and that on being asked, the accused has also thrown a stone, which hit the mother of the victim, this shows the probability of exaggeration of facts of sexual assault. P.W. 4 also admitted that she has seen a quarrel with the accused and P.W. 1. P.W. 5 also admitted that accused used to make quarrel with them and they did not maintain any relation with the accused. P.W. 5, father of the victim also deposed that after the incident he seen his daughter with normal behaviour and have not seen any injury marks on his daughter.

P.W. 8 is the I.O. who has done the whole work of the investigation and confirmed regarding the exaggeration made by the victim and informant. From the medical report, Ext. 4, it also appears that the Medical Officer did not get any injury mark.

- 18. From the totality of the facts, particularly from the exaggeration made by the victim in her evidence, from her previous statement given U/S 164 Cr.P.C., it appears to me that it will be unjust to rely on her statement.
- 19. Considering all above, I hold that the prosecution has failed to prove the offence beyond reasonable doubt and accordingly accused Siva Gogoi is acquitted from the charge U/S 8 of POCSO Act on benefit of doubt and set at liberty forthwith.
- 20. The bail bonds executed by the accused and his surety stand extended for another six months from today.
- 21. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation U/S 357(A) Cr.P.C.
- 22. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 23. It may be mentioned here that originally judgment was fixed on 17.08.2017 but on that day it could not be delivered as self was on leave and got fixed on 31.08.2017.
- 24. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & seal of this Court on this the, 31st day of August, 2017 at Sivasagar.

Special Judge, Sivasagar

APPENDIX

1. <u>Prosecution witnesses</u>:

- P.W.1 Smt. Purna Gogoi
- P.W.2 Victim B
- P.W.3 Miss Devi Gogoi @ Saru Mi
- P.W.4 Smt. Rita Gogoi
- P.W.5 Sri Durlov Gogoi P.W.6 Sri Riju Phukan
- P.W.7 Sri Ananta Gogoi
- P.W.8 Sri Anil Moran (I.O.)
- 2. <u>Defence witnesses</u> -Nil.
- 3. <u>Court witnesses</u> -Nil.
- 4. Exhibits by prosecution -
 - Exbt.1 FIR.
 - Exbt.2 Sketch map
 - Exbt.3 164 Cr.P.C. statement of victim B.
 - Exbt.4 Medical report
 - Exbt.5 Charge-Sheet

Sessions Judge, Sivasagar