IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl.(POCSO) Case No.12 of 2016

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

State Versus

Iyasin Ali

S/O: Lt. Dudu Miya Sk Vill: No.4 Sialmari

PS: dalgaon, 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 : Sri Dharma Baruah, Advocate.

Evidence recorded on :12/01/17,15/03/17,19/05/17,

07/07/2017 and 04/08/2017.

Argument heard on : 07/11/2017

Judgment delivered on: 21/11/2017.

JUDGMENT.

- 1. Briefly stated, the prosecution case is that on 02/07/2016 the prosecutrix(real name is withheld hereinafter referred to as the prosecutrix) aged 15 years lodged a complaint case before the learned Chief Judicial Magistrate, Darrang, Mangaldai alleging that she is a student of class X of Sialmari High School and the accused Iyasin Ali who resides adjacent to their house is known to her in that way the accused is acquainted with her since one year ago from the date of occurrence i.e. 01/06/16. The accused Iyasin Ali told her that she loved her and that on pretext the accused asked her to meet him alone and used to talk to her by meeting her on her way to School. About two months ago i.e. on 01/06/16 the accused with a promise to marry her in absence of any family members of her house came to her house and committed sexual intercourse with her. Though she initially refused to submit herself but the accused on the false assurance of marrying her in the name of god committed sexual intercourse with her. As a result of sexual intercourse she suffered pain which came to the notice of her mother and on being asked about her such condition she narrated about the incident. In this regard, her mother called a village meeting with elderly persons on 01/06/2016. In that meeting the family members of the accused who were present gave assurance to solemnise her marriage with the accused after the Idd festival. Later on the prosecutrix had come to know that the accused was going to marry an another girl even after committing sexual intercourse with her on the assurance of marrying her.
- 2. On receipt of the complaint the learned Chief Judicial Magistrate forwarded the same to the O/C, Dalgaon Police Station to register a a case and to investigate and submit report in final form. On receipt of the complaint with direction of the learned Chief Judicial magistrate, Darrang, Mangaldai the Officer In-charge registered a case vide Dalgaon

P.S. case No.503/16 U/S 376(2)(i)/212/420 I.P.C. read with Section 4 of POCSO Act and endorsed the case for investigation to S.I. Abdul Mazid. In course of investigation the I.O. visited the place of occurrence, recorded the statement of the witnesses U/S 161 Cr.P.C. including the victim(prosecutrix) and got her statement recorded U/S 164 Cr.P.C. before the Magistrate. The I.O. also sent the victim for medical examination and obtained her medical examination report. The I.O. prepared a sketch map of the place of occurrence , arrested the accused. On completion of the investigation the I.O. laid a report U/S 173 Cr.P.C. for the offence U/S 448/376(2)(i) IPC read with Section 4 of the POCSO Act against the accused lyasin Ali to face trial.

- 3. On receipt of the charge sheet with all relevant police papers a special(POCSO) case vide Special No.12(POCSO) of 2016 was registered. After due appearance of the accused copies of the Police papers furnished U/S 173 Cr.P.C. to the accused.
- 4. Thereupon, a close scrutiny and materials on the case record a primafacie case was made out to frame charge against the accused Iyasin Ali U/S 376(2)(i) IPC read with Section 4 of POCSO Act. Accordingly, formal charges thereunder were framed against the accused and the charge so framed on being read over and explained to the accused to which he pleaded not guilty and claimed to stand trial.
- 5. In course of trial the prosecution has tendered evidence of 5(five) witnesses in all and relied on some documents available on record.
- 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 two months prior to 2/07/16 at No.4 Sialmari under Dalgaon Police Station forcefully committed rape on Miss Mursida Begum aged 15 years promising to marry her as a result of which she sustained injury on her private part, as alleged U/S 376 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 in its entirety.

DISCUSSION, DECISOON AND REASONS THEREOF:

- 9. The prosecutrix is examined as PW1. Her evidence is that about 6 months ago while she was alone at home at around 10 a.m. she was studying and at that time the accused came and grabbed her. Then he put her on the ground, removed her cloth and forcefully committed sexual intercourse with her. At that time one Malencha Begum arrived and the accused lyasin Ali went away. She narrated the fact to her mother and her mother gave a village 'bichar' but the accused did not attend the same. Hence, she filed a complaint before the court which was forwarded to the Police Station. Police produced her before the Magistrate and got her statement recorded U/S 164 Cr.P.C. She has proved and marked the FIR as Ext.1, wherein Ext.1(1) to 1(4) are her signatures. Ext.2 is her statement 164 Cr.P.C. statement, wherein Ext.2(1) and 2(2) are her signatures. She was also medically examined.
- 10.In cross examination, it is stated by her that she does not remember the exact date of the incident. She lodged the complaint before the court after 3 months of the incident. After the incident she had narrated the facts to the other people including village head man and one village meeting was arranged but the accused did not participate in the meeting. Regarding the meeting no proceeding was prepared. However,

attendance of the people were recorded. At the time of filing the complaint in the court she had not submitted any document regarding to her age. Nor had she submitted document relating to her age to Police. She has also not mentioned in her complaint why there was delay in lodging the same. After the incident she was not medically examined. However, after filing of the case Police had medically examined her. The accused is her maternal uncle but not through blood. In their family her mother, two elder brother, one sister-in-law and one sister reside with her and they have three houses within the same courtyard. She has admitted that in her 161 Cr.P.C. statement that she had stated before the Police that the accused taking advantage of absence of family members in her home came to her home and by promising to marry her committed sexual intercourse with her in the evening at around 3 p.m. It is also stated in her 161 Cr.P.C. statement that the accused for the last one year had been saying over mobile phone that he loved her. The incident was witnesses by Malensa Begum alone. She has denied the defence suggestion that on the day of occurrence the accused had not committed forceful sexual intercourse with her and that she has lodged the case falsely implicating the accused and that the accused was not present in the village at the time of occurrence. She has also denied the defence suggestion that her age was 19 years at the time of occurrence and she has falsely stated her age was 15 years at that time.

11.PW2 Mustt. Atiran Bewa is the mother of the victim. She has stated that about 6/7 months ago the alleged occurrence took place at around 10 a.m. When she was alone in the house as she had left her daughter(prosecutrix) alone in the house to purchase some articles from the shop at that time accused came to their home and committed forceful sexual intercourse with the prosecutrix. The incident was witnessed by one Malensa who reported the same to her. After seeing Malensa the accused fled away. She narrated the faqct to the mother of

the accused and in this regard one 'bichar' was arranged but the same did not take place.

- 12.In cross examination, she has stated that she had not witnessed the incident nor remember the date of incident. The matter was informed to Police after two months of the incident. His daughter(prosecutrix) had love relation with the accused since prior to one year of the incident. She has denied the defence suggestion that one Asmat Ali had love relation with her daughter(prosecutrix). In her U/S 161 Cr.P.C. statement she had stated that she did not know if her daughter(prosecutrix) had love affair with the accused and she did not know when the accused went to their home and committed physical relationship with her daughter and her daughter had not informed her about the incident on the date of occurrence.
- 13.PW3 is Malensha Khatun. It is her evidence that the prosecutrix and the accused are known to her. The accused had visiting term with the family members of the prosecutrix who is now 15 years. About 8/9 months ago at 10 a.m. when she went to bring water from the tube-well situated at the house of the prosecutrix she had seen the accused with her in their living room. She had seen the prosecutrix was studying and the accused entered into her room and grabbed the prosecutrix. She had not seen anything else and thereafter, she had returned. Then she asked the accused about incident. He stated that he would marry the prosecutrix. One meeting was called by the parents of the prosecutrix in the house of one Kuddrat Ali , but the accused and his parents did not agreed with the 'bichar' and did not participate. She was also not present in the meeting. After the incident the accused entered into marriage with another girl and Mursida had not entered into marriage.
- 14.In cross examination, she has stated that the distance between the house of the accused and her is about $1\ 1/2$ furlong . She does not

remember the exact date when she had seen the accused in the house of the prosecutrix at 10 a.m. Nor she does remember the date when the village 'bichar'had taken place in presence of Dewani Kuddrat Ali. Apart from grabbing on her face of the prosecutrix she had not seen any other act done by the accused. At that time no other person was present except the accused and the prosecutrix. She has stated the age of the prosecutrix on presumption. She is the paternal aunt of the prosecutrix. She has denied the defence suggestion that the prosecutrix had no relationship with the accused, and had not stated before her that he would marry the prosecutrix. She also stated before the Police that he did not know when and where the accused committed sexual act with the prosecutrix.

- 15.PW4 Dr.Mrs. Pranita Das is the Medical Officer of this case who examined the victim on police requisition on 19/07/16 in connection with Dalgaon P.S. case No.503/16 U/S 376(2)(i)/212 /420 I.P.C. read with Section 4 of POCSO Act . On physical examination she found no injury mark in her private part and her mental conditiopn was fully conscious and co-operative. As per radiological examination the approximate of the prosecutrix was in between 20to 22 years. She has proved and marked her medical report as Ext.3, wherein Ext.3(1) is her signature.
- 16.In cross examination, she has stated that the victim at the time of medical examination refused to give her consent for her examination on her private parts. On examination of the prosecutrix as per radiological the prosecutrix was founds to be major.
- 17.PW5 is Abdul Mazid. He has stated to the effect thaty on 15/06/16 he was working as S.I. Of Police at dalgaon Police Station. On that day the O/C, Dalgaon Police Station received one complaint from the court of learned Chief Judicial magistrate, Darrang, Mangaldai with a direction to register a case and investigate into it. Accordingly, the O/C, Dalgaon

- P.S. on the basis of the complaint and treating the same as the FIR registered a case vide Dalgaon PS case No.503/16 U/S 376(2)(i)/212/420 I.P.C. read with Section 4 of POCSO Act and he was entrusted with the investigation of the case. In course of investigation he recorded the statement of the witnesses U/S 161 Cr.P.C. and also got the statement of the victim recorded U/S 164 Cr.P.C. and procured her medical examination report. He also prepared one sketch map of the place of occurrence. After completion of investigation having found a prima-facie case he laid the case U/S 376(2)(1) IPC read with Section 4 of POCSO Act. He has proved and marked the sketch map as Ext.4; wherein ext.4(1) is his signature. Ext.5 is the charge sheet and ext.5(1) is his signature.
- 18.In cross examination, he has stated that the date of occurrence has not been mentioned in the FIR. The FIR was lodged after two months of the incidenty without specifying the date of occurrence. As regard to cause of delay in lodging the FIR there is no explanation in the FIR. The victim did not produce the birth ceretificate to ascertain her age. He did not collected her birth certificawte in the course of investigation.
- 19. Before proceeding to analyse the evidence on record as discussed aforesaid in its proper perspective, it is worthwhile to mention that the accused has been charged U/S 376 IPC read with Section 4 of POCSO Act. In this context, it is settled position of law that in a case of rape the victim is not treated as an accomplice. The evidence of the victim is treated almost like the evidence of an accomplice requiring corroboration where the conviction is based on the evidence of the prosecutrix without any corroboration it will not be illegal on the sole ground. There is no rule of law that her testimony can not be acted upon without corroboration in material particulars. She stands at higher padestral than injured witness. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for

evidence or direct or circumstantial which would lead assurance to her testimony. Assurance sort of corroboration as understood in the context of an accomplice would suffice.

- 20.In the decision of **B.B. Hiraji Bhai VS Gujarat(AIR) 1983 S.C. 753**Their Lordship have expressed opinion which is reproduced herein below:-
 - "We are, therefore, of the opinion that if the evidence of the victim does not suffer from "any basic infirmity and probabilities factor" does not render it unworthy of credence as a general rule, there is no reason to insist on corroboration except from the medical evidence.", where having regard to the facts and circumstances of the case or medical evidence can be expected to be forthcoming when "probabilities factors" is found to be out of tune.
- 21. Tested on the anvil and touchstone the aforesaid principle in the facts and circumstances of the present case, if we appraise the evidence of the PW1(prosecutrix) on record, it would appear that her testimony is found to be shaky and suffers from basic infirmities and her testimony does not even finds corroboration from the independant evidence of PW2 as well as the medical evidence on record. Furthermore, the evidence of the other witnesses are also full of exaggeration, embellishment and replete with contradictions in respect of the broad spectrum of the case and thereby rendering the prosecution casae not at all belieavle as to the commission of the rape on the prosecutrix(PW1).
- 22.On close scrutiny of the evidence of the prosecutrix(PW1) it appears that she has disclosed that the accused came to their house in absence of any other family members in the house and committed forceful sexual intercourse with her by removing her cloth. At that time when PW2 had arrived the accused went away. In this respect, if we turn to the

testimony of PW3 it would transpire that she has not stated that she saw the accused committing sexual intercourse with the prosecutrix(PW1) when she came to bring water from the tube-well situated in the house of the prosecutrix. Rather, it is her evidence that she had only seen that at that time the prosecutrix was studying and the accused after entering into the room grabbed the face of Mursida. Except this she had not seen anything else as she returned thereafter. Thus, the testimony of the prosecutrix(PW1) belies her statement that the accused while committing sexual intercourse with her left her house after having seen PW3 who came to their house. It is also not believable as to her seeing the accused inside the room of the prosecutrix at the time of grabbing the face of the prosecutrix. If PW3 had seen the nefarious act on the part of the accused with the prosecutrix she would have definitely interfered instead of silently slipping away from the place of occurrence. On the other hand, if the prosecutrix(PW1) had also seen PW3 while the accused was committing sexual intercourse with her she would have also raised hue and cry to save herself out of the situation, but there is no evidence in the testimony of prosecutrix(PW1) that when the accused had foreceful sexual intercourse against her will she raised cry for help from the neighbourhood people adjacent to their house. That apart, though the prosecutrix(PW1) has denied having any love relation with the accused but her mother(PW2) has revealed in cross examination that her daughter (PW1) had love relation with the accused prior to one year of the incident. However, in contradiction to the testimony of the prosecutrix(PW1) it has come to the light from the statement of the victim recorded U/S 164 Cr.P.C. vide Ext.2 that she had love relation with the accused before the incident the accused and promised to marry her.

23.Be that as it may, if the evidence of the Medical Officer(PW4) is perused it would disclose that M.O.(PW4) has ruled out any injury mark on the private part of the prosecutrix(PW1) at the time of her medical examination and as per radiological examination the approximate age of

the prosecutrix was found to be 20 to 22 years. It is further disclosed by the M.O.(PW4) in cross examination that except undergoing radiological X-ray examination by the prosecutrix(PW1) she refused to give her consent to examine her private part. Thus, it can be safely inferred that if there had been sexual intercourse with the victim against her will by the accused she would have consented to examine her private part by PW4. It is also beyond comprehenssion as to why the prosecutrix(PW1) refused to give consent to examine her private part even when it is apparent from the evidence on record of the prosecutrix(PW1) herself that she lodged the FIR after two months from the date of occurrence. Hence, the testimony of PW1 which is found to be full of embellishment and improvement invariably creates a doubt as to the veracity of her evidence that the accused had sexual intercourse with her against her consent the dav of occurrence. Further more. PW1(prosecutrix) has claimed that she was 15 years old at the time of occurrence but in order to substantiate claim of her age she has failed to produce any certificate from available source. The prosecutrix has admitted that she has not submitted birth certificate to prove that she was a minor girl of 15 years at the time of occurrence, whereas the radiological examination test discloses the age of the victim as 20 to 22 years at the time of the occurrence. When the prosecutrix has failed to substantiate her age of minority at the time of commission of the offence by producing birth certificate the radiological test examination, Ext.3 disclosing that the victim girl was major girl of 20 to 22 years at the time of the occurrence will prevail to hold that the prosecutrix(PW1) was a major girl at the time of the occurrence.

24. The next important question arises for decision is what would be the legal impact of delayed First Information Report. No doubt in **Harpal Singh and another -VS- State of H.P.(AIR 1981 SC 361)** it has been held that where the honour of the family is involved, then in such cases,

at times the number of the family take some times to decide whether to take the matter to the court or not.

- 25. In the present case in hand, it is patent that there is inordinate delay of two months in lodging the FIR. But there is not a whisper as to the cause of delay in lodging the FIR. However, though PW1(prosecutrix) for the first time in the court in her evidence has sought to explaine the delay in lodging the FIR as because the matter would place before the village Samaj, but no statement could be arrived at the village Samaj due to absence of the accused and as such, the complainant lodged the FIR after two months from the date of occurrence can not be accepted as a proper explanation for delay in lodging the FIR on the face of the incoherent, inconsistent and contradictory evidence on record. It is beyond comprehension as to why the prosecutrix(PW1) lodged the FIR after inordinate delay of two months with the Police and what had prompted her to place the matter after the incident before the Samaj when she was a victim of ravishment by the accused and where the honour of her and her family was involved.
- 26. Therefore, in my opinion the evidence of the prosecutrix (PW1) which has suffered from serious infirmity and inconsistence has gone to the root of the case affecting the "probabilities factor" as to the alleged incident of rape and rather it can be safely inferred that if she had sexual intercourse with the accused on the date of occurrence she may have consented to it being a grown up lady at that time due to love relation with the accused. Hence, the evidence of the prosecutrix along with the testimony of other PWs coupled with the lack of convincing evidence to explaine the delay in lodging the FIR the prosecution case is found to be unworthy of credence and creature of afterthought. Therefore, the testimony of prosecutrix (PW1) is found to be incoherent and unimplicite and also has not got corroboration from the other evidence on record either direct or circumstantial and, therefore, the evidence on record

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does not have any cumulative effect fact to bring home the charge levelled against the accused. Hence, the accused is entitled to acquittal.

27.In the result, I am constrained to hold that the accused Md. Iyasin Ali is not guilty U/S 376 IPC read with Section 4 of POCSO Act. He is acquitted thereunderr. He is set at liberty forthwith.

28.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 21stth day of November,2017.

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

Sessions Judge Darrang,Mangaldai (P.Saikia) Sessions Judge, Darrang,Mangaldai.

APPENDIX:

A)Prosecution witnesses:

i)PW1 Morsida Begum ii)PW2 Atiran Bewa iii)PW3 Malensha Khatun iv)PW4 Dr.Mrs. Pranita Das v)PW5 Abdul Mazid

B) Defence witness: Nil.

C)Exhibits:

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

> Sessions Judge Darrang, Mangaldai.