

IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
 Sessions Judge,
 Dhemaji,

JUDGMENT IN SESSIONS CASE NO. 29(DH)/2016.

U/S 376(1) of IPC R/W section 6 of POCSO Act.

The State of Assam

- Versus -

Shri Moni Baruah,
 S/O Lt. Mekel Baruah,
 Vill. Kerekoni Majgoan,
 P.S. Silapathar,
 Dist.- Dhemaji.Accused Person

Committing Magistrate : Shri P.C. Kalita,

Chief Judicial Magistrate,
 Dhemaji.

Appearance:

Shri A. Fogla,
 Public ProsecutorFor the State

Shri K.C. Sonowal, Advocate and

Smt. B. Gogoi, AdvocateFor the Accused

Date of prosecution evidence : 18-08-2016, 21-12-2016, 03-02-2017,
 05-04-2017, 02-08-2017, 20-02-2018.

Date of argument : 17-6-2019.

Date of Judgment : 29-6-2019.

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JUDGMENT:**Brief Facts:**

1. Prosecution case, in brief, is that on 27-12-2015 complainant Smti. Renu Hazarika lodged an ejahar at Sissiborgaon Police Out Post under Silapathar Police Station alleging inter-alia that about six months back accused Moni Baruah aged about 60 years ,who is her neighbour, committed rape on her minor daughter Smti 'X' (**real name is withheld**) aged 16 years, in absence of her other family members. It is also alleged in the ejahar that the accused threatened the victim to kill her if she disclosed the matter to anybody. Complainant also mentioned in the ejahar that her daughter became pregnant and on being asked she disclosed that the accused above named is responsible for her pregnancy.
2. On receipt of the ejahar, I/C, Sissiborgaon Police Out Post made GD Entry vide No. 135 dated 27-12-2015 and forwarded the same to the O/C, Silapathar Police Station for registering a case under proper sections of law and he (I/C) himself took-up the investigation. On receipt of the said ejahar, O/C, Silapathar Police Station registered a case vide Silapathar P.S. Case No. 340/2015 u/s 376 of IPC and R/W section 6 of POCSO Act. Police, on completion of investigation submitted Charge-sheet against the accused Moni Baruah under the said section of law.
3. The case came up before the learned Chief Judicial Magistrate, Dhemaji and the Ld. Magistrate issued process for appearance of the accused person and on appearance furnished necessary copies to the accused person and committed the case to this Court.
4. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 376(1) of IPC and R/W section 6 of POCSO Act. and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 7 witnesses. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence whatsoever.

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5. **Points for determination :**

(1) That , before 6 months from the date of 21-12-2015 on several occasions you committed rape on Smti 'X', a minor girl below the age of 18 years and thereby you committed an offence punishable u/s 376(1) of IPC.

(2) That, before 6 months from the date of 21-12-201, you committed aggravated penetrative sexual assault on Smt. 'X' and thereby you committed an offence punishable u/s 6 of POCSO Act.

6. I have gone through the evidence on record and heard arguments of both sides.

Discussion of Evidence :

7. **PW1 Smti Renu Hazarika is the mother** of the victim. She deposed that the occurrence took place about 8 months ago (from the date of her recording evidence). Accused's wife called her daughter (victim) to stay in their house. At night the accused forcibly committed rape on her (victim). Thereafter, accused committed rape on her daughter twice inside their house. Accused also threatened the victim not to disclose the fact to anybody. She did not disclose the fact due to fear of the accused. Victim became pregnant and on being asked, she (victim) stated that the accused committed rape on her. Then she lodged complaint at police station. She put her thumb impression on the ejahar. Police recorded her statement. Victim was medically examined by Doctor. At the time of occurrence, the victim was aged about 15 years. The child in the womb of the victim was found dead.

In cross-examination PW1 stated that the house of the accused is near their house. He used to cultivate land of belonging to other people. The victim used to go to the field to see cows tethered in the field. She denied the defence suggestion that the accused cautioned them for letting the victim go alone. It is denied that on that grudge, she filed this case against the accused. She denied the defence suggestion that the accused did not commit rape on the victim. It is also denied that the victim did not state before her that accused committed rape on her (victim). She also denied the defence suggestion that she has given false evidence that accused committed rape on the victim.

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8. **PW2 Smti 'X' (victim)** identified the accused in the dock and stated that Renu Hazariuka is her mother. She deposed that on the date of occurrence accused's wife took her to accused's house and while she was sleeping in accused's house he (accused) committed bad act with her. A child was born to her (victim) but he died. Then her mother filed this case. She had come to the Court earlier and gave her statement.

In cross-examination PW2 denied the defence suggestion that Moni's (accused) wife did not come and take her. She denied the defence suggestion that she did not tell the Magistrate that Moni's wife had come and taken her. She also denied the defence suggestion that Moni (accused) did not do bad thing with her.

9. **PW3 Dr. Chandrajit Doley** stated that on 28-12-2015 he examined the victim Smt. 'X' at Model Hospital at Silapathar on police requisition on being escorted and identified by Purnima Saikia. On examination he found no any sign of injury on the body of the victim. In his opinion, Doctor (PW3) opined that after physical and laboratory examination, she was found pregnant and her age according to the birth certificate was 15 years. Age of pregnancy could not be determined as Ultra Sonography Report not submitted. Exhibit-1 is the Medical Report and Ext-1(1) is his signature.

Defence declined to cross-examine the Doctor (PW3).

10. **PW4 Shri Petal Hazarika** stated that he knows the accused as well as Renu Hazarika and her daughter- Smt. 'X'. Occurrence took place about one year ago (from the date of his recording evidence). O/C had come to victim's house and he (PW4) had also gone there. Victim told the O/C that the accused had induced her and had sexual intercourse with her and made her pregnant, and that she was 7 months pregnant.

In cross-examination PW4 stated that the victim girl is his grand-daughter. He denied the defence suggestion that he had not heard that the accused had sexual intercourse with the victim Smt. 'X' and made her pregnant

11. **PW5 Deben Hazarika** stated that he knows the accused and the complainant-Renu Hazarika and her daughter/victim. According to him occurrence took place about one year ago (from the date of his recording evidence).He got to

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know that the accused had abused the victim and she became pregnant and she was about 7 months pregnant. Victim is not mentally stable.

In cross-examination PW5 denied the defence suggestion that he had not heard that the accused made the victim pregnant.

12. **PW6 Dambaru Chutia** stated that he knows the accused as well as the complainant-Renu Hazarika and her daughter/victim. He deposed that about 2 years back (from the date of recording his evidence), one day, while he was returning home from the field, he saw a gathering of public and police in the house of the complainant and then he also went there. From the people gathered in the house of the complainant, he came to know that the accused committed bad thing to the victim.

In cross-examination PW6 denied the defence suggestion that he had not heard anything about the occurrence.

13. **PW7 Kuladhar Konwar** is the IO. His evidence is that on 27-12-2015, he was posted as I/C at Sissiborgaon Out Post under Silapathar Police Station and on that day, he received an ejahar from Smti Renu Hazarika. Accordingly, he made GD Entry vide No. 1035 dated 27-12-02015. He forwarded the ejahar to O/C, Silapathar P.S. for registering a case and he himself took-up investigation. During investigation, he recorded statement of the complainant u/s 164 CrPC, visited the place of occurrence, prepared a sketch map of the P.O. and recorded statement of the witnesses. He got the victim medically examined by Doctor. He arrested the accused and sent him to judicial custody. On 27-12-2015 O/C, Silapathar P.S. registered a case vide Silapathar P.S. Case No.340/15 u/s 376 IPC R/W sec. 6 of POCSO Act and endorsed him for investigation of the case. He also produced the victim before the Magistrate for recording her statement u/s 164 of Cr.P.C. He seized the birth certificate of the victim Smti 'X'. On 11-01-2016, he was transferred and handed-over the Case Diary to O/C, Silapathar P.S. Thereafter, S.I. Ganesh Barman took-up the investigation and he collected the medical report of the victim and after completion of investigation, he filed the Charge-sheet against the accused. Ext-2 is the GD Entry, Ext-3 is the sketch map, and Ext-4 is the ejahar and Ext-4(1) is his signature. Ext-4(2) is the signature of O/C Abdul Hannan which is known to him.

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Ext-5 is the seizure list and Ext-5(1) is his signature. Ext-6 is the 164 statement of the victim and Ext-7 is the Charge-sheet and Ext-7(1) is the signature of Ganesh Barman (S.I.) which is known to him. Paper Ext-1 is the Birth Certificate of the victim Smt. 'X' (under objection).

This witness (PW7) was not cross-examined by defence.

Appreciation of evidence:

14. From the discussion of the evidence on record it appears that PW1, the mother of the victim lodged complaint before police alleging that accused Moni Baruah committed rape on her. In her evidence on oath PW1 stated that on the relevant date her daughter stayed in the house of the accused and while her daughter was sleeping in the house of the accused, he (accused) forcibly committed rape on her. It is also in the evidence of PW1 that accused also committed rape on her daughter prior to this incident.

15. Victim examined herself as PW2 and stated that when she was sleeping in the house of the accused he did bad act with her. Victim also stated she became and one baby was born to her, but died. Victim also made statement before magistrate u/s 164 Cr.PC wherein she made similar statement.

16. PW4, PW5 and PW6 stated that they heard that accused Moni Boruah had sexually harassed the PW2.

17. It is seen from record that victim in her evidence stated her age to be 15 years and also produced birth certificate (paper ext1) as proof of her age. PW3, MO examined the victim and found victim was pregnant at the time of examination and mentioned the age on the basis of her birth certificate as 15 years.

18. It is not in dispute that the victim is aged 15 years. It is also not in dispute that the victim became pregnant.

19. It may also noted that the MO in his report Ext.1 recorded the history of the incident wherein it is mentioned that accused Moni Boruah had forceful intercourse with her in his house.

20. Coming to the evidence of I.O I have also examined the evidence in cross part of PW1 and PW2. Defence by putting mere suggestion attempted to show that

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the accused was not involved in the commission of the offence. But PW1 and PW2 denied defence suggestion.

21. I have carefully considered the evidence on record. It transpires that the victim has identified the accused to be the perpetrator and the medical evidence fully support her version. There is nothing on record which would suggest anything contrary to her version

22. The ld. counsel for the accused while arguing the case before me submitted that the victim stated that the accused committed bad act with her. The ld. counsel contended that the ejahar was filed about 6 months after the occurrence and it creates a doubt as regards the involvement of the accused.

23. I have given my anxious thought to the fact materials. It is in the evidence of PW1, mother of the victim in her evidence clearly stated that when the victim became pregnant she was asked about the matter and victim disclosed that accused had committed rape on her. So considering the nature of the offence I find the evidence convincing and reliable. There is nothing on record to show that the accused has been falsely implicated.

In State v Gurmit Singh (1996)2 SCC Hon'ble Supreme Court held--

'The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. In the same case the Hon'ble Supreme Court also held-- 'The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent even more reliable. Such evidence is entitled to great weight, absence of corroboration notwithstanding'

24. In view of what has been discussed above I have no hesitation in my mind that the accused was the perpetrator of the crime.

Now let me see the relevant provisions:

U/S 5 of POCSO Act which reads: Aggravated penetrative sexual assault.—(J)(ii) Whoever, commits penetrative sexual assault on a child which— in the case of female child, makes the child pregnant as a consequence of sexual assault.

375. Rape – A man is said to commit "rape" if he -

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(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstance falling under any of the following seven descriptions:-

Firstly.- Against her will

Secondly.- Without her consent

Thirdly.- With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly,- With her consent, when the man knows that he is not her husband and that her consent is given because he believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Further **section 29 of POCSO Act** speak of presumption as to certain offences which is as under:

Presumption as to certain offences.-' Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.'

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25. In the case in hand we find from the materials on record that the accused committed penetrative sexual assault on the victim and as a result the victim became pregnant and this constitutes an offence of aggravated sexual assault as defied u/s 5 punishable u/s 6 of POCSO Act. I also find that the accused committed rape on the victim against her will as defined u/s 375 IPC punishable u/s 376 IPC.

26. I find that prosecution has been able to prove the offence u/s 376 IPC and section 6 of POCSO Act against the accused beyond all reasonable doubt.

O R D E R:

27. In the result I find accused **Moni Baruah** guilty u/s 376(1) IPC and 6 of POCSO Act. Accordingly the accused is convicted thereunder. However having regard to section 42 of POCSO Act I am inclined to award sentence to the accused u/s 6 of POCSO Act.

28. Heard the accused person on the point of sentence. The accused submitted that the accused is a married man having wife and children and he is aged about 60 years and he prays for mercy.

29. Considering all aspect the accused is sentenced to R.I. for 10 (ten) years and to pay a fine of Rs.1,000/-(one thousand) i.d. R.I. for another one month u/s 6 of POCSO Act.

30. Set off the period of detention.

31. Issue jail warrant.

Victim Compensation u/s 33(8) of POCSO Act R/W section 357 A

Cr.PC.

In this case I have considered the type of abuse, the gravity of offence and the severity of mental and physical harm or injury suffered by the child/victim. We also find that the victim as a result of sexual intercourse became pregnant and suffered a lot physically and mentally and in my opinion she needs to be rehabilitated.

32. So, I find that it is a fit case to award compensation to the victim under the above provisions of law. Accordingly, a sum of Rs.1,00,000/-(one lakh) is awarded

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as compensation to the victim to be paid by DLSA, Dhemaji, after making due enquiry.

33. A free copy of judgment be given to the accused person.
34. A copy of judgement be furnished to the District magistrate u/s 365 Cr.PC.
35. Send a copy of judgment to secretary DLSA for necessary action.
36. Judgment is pronounced in open Court.
37. Given under my hand and seal of this Court on this the **29th day of June/2019.**

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(S. Das)
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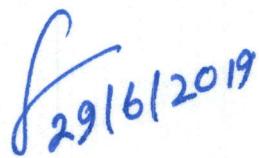
Appendix:

Prosecution Witnesses

- P.W.- 1 - Smti Renu Hazarika,
- P.W.-2 - Smti 'X' (victim),
- P.W.-3 - Dr. Chandrajit Doley,
- P.W.-4 - Shri Petal Hazarika
- P.W.-5 - Deben Hazarika
- P.W.-6 - Dambaru Chutia
- P.W.-7 - Kuladhar Konwar

Prosecution Exhibits

- Exhibit-1 - Medical Report,
- Exhibit 1(1) - Signature of Dr. Chandrajit Doley,
- Exhibit 2 - GD Entry,
- Exhibit 3 - Sketch map.
- Exhibit-3(1) - Signatures of Kuladhar Konwar,
- Exhibit 4 - Ejahar,
- Exhibit-4(1) - Signature of Kuladhar Konwar,
- Exhibit-4(2) - Signature of Abdul Hannan, O/C.
- Exhibit 5 - seizure list
- Exhibit 5 (1) - Signature of Kuladhar Konwar,
- Exhibit 6 - 164 statement of the victim,
- Exhibit 7 - Charge-sheet
- Exhibit 7 (1) - signature of Ganesh Barman,
- Paper Exhibit 1- Birth Certificate


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