DISTRICT: GOLAGHAT.

HEADING OF JUDGMENT IN SPECIAL CASES:

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No. 18/2016.

Arising out of G.R. Case No.377/2015.

U/S 4 of POCSO Act.

Present :- Shri S. K. Sharma,

Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Md. Mustakin Ali. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. J.K. Goswami,

Advocate, Golaghat.

Dates of evidence : 30.06.2017, 14.09.2017,

16.11.2017, 23.03.2018, 13.08.2018, 15.11.2018,

28.08.2019.

Date of argument : 06.03.2020.

Date of Judgment : 23.03.2020.

JUDGMENT:

- 1. The accused Md. Mustakin Ali, son of Md. Sirazul Islam, resident of Anandapur Gaon, under Uriamghat Police Station, District Golaghat, Assam, here in this case, has been put to face the trial to answer the charges under section 4 of POCSO Act, 2012.
- 2. The prosecution case, as unfolded in the first information report, in brief is that on 02.09.2015, the informant Shri Dil Bahadur Limbu has lodged an ejahar before the O/C of Uriamghat Police Station alleging inter-alia that on 25.08.2015, the accused person by inducing the daughter of the informant, aged about 15 years took her to Napani in a jungle near the hanging bridge over the Doyang river and there, the accused person had forcefully committed rape the daughter of the informant and also threatened her with dire consequences, if she raised hue and cry.
- 3. On receipt of the written ejahar from the informant, the O/C of Uriamghat Police Station registered the case vide Uriamghat P.S. Case No.50/2015, u/s 376(2) (i) of IPC, read with Section 4 of POCSO Act and he himself investigated the case. During investigation, the I.O. visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. The I.O. Also got the victim examined by Doctor and collected the report and he also got the statement of the victim recorded in the Court. During investigation, the I.O. also seized one school certificate of the victim regarding her age. Then on completion of investigation, the I.O. submitted charge sheet against the accused aforesaid u/s 376(2)(i) of IPC, read with Section 6 of POCSO Act to stand trial in the Court.
- 4. On appearance of the accused person before this court, and after hearing learned counsels of both the sides, charges u/s 4 of POCSO Act has been framed against the accused and the contents of the charges was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To bring home the charge against the accused, the prosecution side has examined as many as 10 witnesses including the M.O. and I.O. After closing the

prosecution evidence, the statement of the accused person has been recorded under the provision of section 313 of Cr.P.C. The accused declined to adduce evidence in his defence. The plea of the accused is total denial.

6. I have heard Mr. P. Bora, learned Special Public Prosecutor for the State and Mr. J.K. Goswami, learned counsel for the accused.

NOW THE POINTS FOR DETERMINATION ARE -

- 7. (i) Whether the victim was a child as defined u/s 2(d) of the POCSO Act, at the time of occurrence ?
 - (ii) Whether the accused on 25.08.2015, at about 8 A.M., at Napani, near the hanging bridge jungle, under Uriamghat Police Station, District Golaghat, committed penetrative sexual assault upon the victim child and thereby committed an offence punishable under Section 4 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

Point No.(i) :

8. The victim P.W.1 has deposed that at the time of occurrence, her age was 18 years. P.W.2, the informant Shri Dil Bahadur Limbu has deposed that at the time of occurrence, the age of the victim was 18 years. P.W.4 Dr. Paban Ch. Saikia has deposed in his evidence that on 03.09.2015, he was working at Swahid Kushal Konwar Civil Hospital, Golaghat as Sub-Divisional Medical & Health Officer. On that day, at about 2'30 P.M., he has examined the victim girl, of village Uriamghat (Fulbari), under Uriamghat Police Station, District – Golaghat, Assam, in reference to Uriamghat P.S. Case No. 50/2015 vide Emergency Registration No. 24350, on being escorted and identified by WHG Smti. Swanshiri Doimari and after examination, the Doctor, P.W.4 has opined that the age of the girl was above 18 years and sign of recent sexual intercourse not seen and no injury found on her private parts or body. Accordingly, P.W.4 issued Ext-3 the medical examination report and Ext-3(1) is his

signature. Ext-4 is the ossification test report and Ext-4(1) is the signature of Dr. Vikash Sarmah, Radiologist. P.W.8 Shri Tarun Kr. Lungeli has deposed in his evidence that he is working as Principal of Deffodil School, Uriamghat since the year 2001. He knows the informant, but he does not know the accused. The victim was the student of his school. He gave one school certificate of the victim on 19.12.2015 and at that time, the victim was reading in Class IX in his school. P.W.8 also deposed that according to the School Admission Register of his school, the date of birth of the victim is 15.01.1999. Ext-5 is the said school certificate of the victim and Ext-5(1) is his signature. According to the School Admission Register of the year 2014, the name of the victim is incorporated in Serial No.7. Ext-7 is the relevant copy of the School Admission Register. In cross examination, P.W.8 has stated that he does not know on what basis the date of birth of the victim was incorporated in the School Admission Register. Hence, the entry in the School Admission Register cannot take precedent over the medical evidence.

9. From the above, it is not established that the victim was below 18 years and a child at the time of occurrence.

Point No.(ii) :

10. P.W.1 is the victim girl, who deposed in her evidence that she knows the accused person. The occurrence took place in the year 2015, at day time, near the jungle of Na-pani hanging bridge. At the time of occurrence, she was reading in Class IX at Defodil School. The accused was her friend. On the day of occurrence, the accused took her for outing to the jungle of Na-pani near the hanging bridge. There, the accused unfastened her wearing clothes and then committed rape on her for about five minutes though she resisted him. At that time, no other person was present there. Thereafter, the accused took her from there on his bike and dropped her in her house. P.W.1 also deposed that on the next day of the occurrence, she reported the matter to her father and then her father lodged the ejahar at Police Station. Thereafter, police interrogated her and also got her examined by Doctor. Police also got her statement recorded in the Court. Ext-1 is her said statement and Ext-1(1) and Ext-1((2) are her signatures.

In cross examination, P.W.1 has stated that she had love affair with the accused person. On the day of occurrence, she voluntarily went with the accused. P.W.1 has denied defence suggestion that the accused did not rape her. At the time of occurrence, she willfully went to the jungle. P.W.1 has further denied defence suggestion that at the time of occurrence, the accused did not unfasten her wearing clothes.

11. P.W.2 is the informant of this case as well as father of the victim, who deposed in her evidence that he knows the accused person. The occurrence took place about one year back. After the occurrence, the Nepali Students Union came to his house and asked him to put his signature in the ejahar and then he put his signature in the ejahar and the said ejahar was written by the said Nepali Students Union. P.W.2 also deposed that he came to know from the boys of the said Nepali Students Union that at the time of occurrence, they apprehended the accused and the victim. Ext-2 is the ejahar and Ext-2(1) is his signature.

In cross examination, P.W.2 has stated that he does not know what was written in the ejahar. He also does not know well regarding the occurrence.

12. P.W.3 Shri Bishnu Upadhaya has deposed in his evidence that he knows the accused person from the day of occurrence. He knows both the victim and the informant. The occurrence took place about two years back, near the hanging bridge. P.W.3 also deposed that after taking the accused and the victim by police to the Uriamghat Police Station, then the informant told him that the accused committed rape on the victim.

In cross examination, P.W.3 has stated that he came to the Police Station to meet the informant. He has denied defence suggestion that the informant did not state before him that the accused committed rape on the victim.

13. P.W.5 Shri Mohen Limbu has deposed in his evidence that he knows the accused person. The occurrence took place about two years back near the hanging bridge. At the time of occurrence, when he went to the place of occurrence, then the accused and the victim were wearing their clothes. P.W.5 also deposed that as the

accused and the victim were committing indecent act, therefore, they apprehended then and handed them over to their parents. The victim also told before him (P.W.5) that the accused forcefully committed indecent act with her.

In cross examination, P.W.5 has stated that he did not state before police that at the time of occurrence, he saw that the accused and the victim were wearing their clothes. He did not see the occurrence.

- 14. P.W.6 Shri Robi Limbu has deposed in his evidence that he knows the accused person. The occurrence took place about two years back and on the day of occurrence, the informant told before him that the accused elopped the victim and then they searched for the victim and found the victim in the house of one her friend. Thereafter, the victim was crying and told before him (P.W.6) that the accused told her that he would go with her but the accused did not come there. Thereafter, they went to the Police Station and then the informant lodged the ejahar. P.W.6 further deposed that the victim willfully went to the house of her friend.
- 15. P.W.7 Shri Krishna Chetia has deposed in his evidence that he knows the accused person. The occurrence took place in the year 2015. On the day of occurrence, the informant told before him that on the said day, someone took the victim to Na-pani and near the hanging bridge, the victim was raped.
- 16. P.W.9 Shri Tek Bahadur Limbu has deposed in his evidence that he knows the informant as well as the accused person. The occurrence took place in the month of August, 2015. On the day of occurrence, at about 12 noon, he came to know from the victim that the accused committed indecent act with her at Na-pani near the hanging bridge.

In cross examination, P.W.9 has stated that the victim is his niece. He has denied defence suggestion that the victim did not state before him regarding the occurrence.

17. P.W.10 Shri Moneswar Bey is the I.O. of this case. His evidence reveals that on 02.09.2015, he was working as Officer In-charge at Uriamghat Police

Station. On that day, the informant Dil Bahadur Limbu has lodged an ehaghar before the Police Station and on receiving the ejahar, he registered the case vide Uriamghat P.S. Case No.50/2015, u/s 376(2)(i) of IPC, read with Section 4 of POCSO Act and he himself investigated the case. During investigation, he visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. Ext-3 is the sketch map and Ext-3(1) is his signature. Thereafter, he got the victim examined by Doctor and collected the report and also got the statement of the victim recorded in the Court. During investigation, he also collected one school certificate of the victim from her school. Thereafter, on completion of investigation, the I.O. Submitted charge sheet against the accused u/s 376(2)(i) of IPC, read with Section 6 of POCSO Act to stand trial in the Court.

In cross examination, P.W.10 has denied defence suggestion that he did not investigate the case properly.

18. The victim had deposed in cross examination that she had voluntarily and willingly gone with the accused into the jungle. P.W.2, her father deposed that he had put his signature on the ejahar written by the Nepali Students Union at their instance and does not know of its contents, nor does he know about the occurrence well. The Union boys informed him that they apprehended both accused and victim. P.W.5 deposed that he found both putting on their dresses at the place of occurrence and were committing indecent act. He is the only P.W., other than the victim, claiming to have been present in the place of occurrence, but did not advert to any protest or resistance on the part of the victim. Rather, his evidence along with that of P.W.2 is strongly suggestive of the inference that whatever happened between the victim and the accused was consensual in nature, given also the admitted fact that the victim, a grown up girl of majority age had willingly gone into the jungle with her lover, i.e. the accused. Further, a twist is added to the prosecution case by P.W.6 which is contradictory in nature, as he deposed that the victim told him the accused had promised to take her away but on the day of occurrence, he did not show up. The evidence of P.W.7 and P.W.9 are not of much relevance,

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bordering on hearsay. Further the fact that the FIR was lodged after a

week of the alleged occurrence does not help the prosecution case.

19. In the light of the evidence discussed above, it is not

established that the accused committed penetrative sexual assault or

rape upon the victim.

20. Accordingly, I hold that the prosecution has failed to

establish its case under Section 4 of POCSO Act against the accused.

Consequently, accused Mustakin Ali is acquitted of the said offence and

set at liberty forthwith. His bail bond stands extended by further six

months from today.

Given under my hand and seal of the Court on this the 23rd day of

March, 2020.

(S. K. Sharma) Special Judge, Golaghat.

Dictated & Corrected

by me.

Special Judge, Golaghat.

APPENDIX:

WITNESSES FOR THE PROSECUTION:

- 1. P.W.1 The victim girl.
- 2. P.W.2 Shri Dil Bahadur Limbu.
- 3. P.W.3 Shri Bishnu Upadhyaya.
- 4. P.W.4 Dr. Paban Ch. Saikia, M.O.
- 5. P.W.5 Shri Mohen Limbu.
- 6. P.W.6 Shri Robi Limbu.
- 7. P.W.7 Shri Krishna Chetia.
- 8. P.W.8 Shri Tarun Kr. Lungeli.
- 9. P.W.9 Shri Tek Bahadur Limbu.
- 10. P.W.10 Shri Moneswar Bey, I.O.

WITNESSES FOR THE DEFENCE: Nil.

EXHIBITS FOR THE PROSECUTION:

- 1. Ext-1 Statement of the victim recorded u/s 164 of Cr.P.C.
- 2. Ext-2 Ejahar.
- 3. Ext-3 Medical examination report.
- 4. Ext-4 Ossification test report.
- 5. Ext-5 School certificate of the victim.
- 6. Ext-6 Sketch map of the place of occurrence.
- 7. Ext-7 Charge sheet.

EXHIBITS FOR THE DEFENCEN: Nil.

Special Judge, Golaghat.