IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 19/2018 corresponding to GR Case No. 733/2018 & Bokajan Police Station Case No. 151/2018 Under Section 376 IPC/ R/W 4 of the

POCSO Act.

State of Assam

Versus

Shri Robin Gogoi

Name of informant/complainant:

Shri Horen Gogoi

S/O Late Johan Gogoi

Village: Baghjan, Balipathar

P.S: Bokajan

District: Karbi Anglong, Assam.

Name of the accused person facing trial:

Shri Robin Gogoi

S/O Late Johan Gogoi

Village: Baghjan, Balipathar

P.S: Bokajan

District: Karbi Anglong, Assam.

Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor

For the defence : Mr. Jitu Paul

Date fixed for Argument : 29.05.2019

Judgment pronounced & delivered on: 07.06.2019

JUDGMENT

- 1. It is a case of penetrative sexual assault on the victim alleged to have been committed by her maternal uncle.
- 2. The prosecution case in brief is that on 15.07.2018 the informant named above lodged a written ejahar with Bokajan Police Station stating inter alia that since last three months the accused person took the victim to his house and raped her there but she refrained from disclosing the incident to anybody of his family about the incident. On 14.07.2018 the victim informed him about the incident after a meeting was held in the village. On receipt of written ejahar, Bokajan Police Station registered a criminal case vide Bokajan Police Station case No. 151/2018 under section 376 IPC read with section 4 of the POCSO Act and started investigation. On completion of investigation, the charge sheet was submitted under section 4 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the present accused person before the Court, copy was supplied to the accused person. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary I found that there was ground for presuming that that the accused person committed the offenses under section 4 of the POCSO Act and accordingly, the charge was framed. The particular of the offence charged was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During trial, Prosecution has examined as many as 8 (eight) witnesses. The accused person has been under section 313 CrPC. The defence has examined none. Plea of defense is of total denial.

5. **Points for determination**

Whether the accused on or before 15.07.2018 at Balipathar under Bokajan Police Station or in any other Police Station made penetrative sexual assault upon the victim?

Decisions and reasons thereof:

- 6. I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record.
- 7. PW-1 is the father of the victim whose evidence is silent as to how she was at the time of occurrence. PW-2 is the victim whose evidence shows she was 13 years old at the time of occurrence. PW-3 is the brother of the victim whose evidence shows that she was 12 years old at the time occurrence. PW-4 who is the sister in law of the victim has stated in her evidence that at the time of occurrence th victim was 12 years. According to PW-5 and PW-6, the victim was 13 years at the time of occurrence.

- 8. Ext-3 is medical report. Ext-7 is the medical officer who examined the victim. According to Ext-3 the victim was below 16 years (14/15 years). PW-8, the investigating officer has clearly stated in his evidence that vide Ext-1(A) he seized a school certificate of the victim marked as M-Ext-1. M-Ext-1 shows that date of birth of the victim is 10-04-2006. From the discussions made it has become crystal clear that at the time of occurrence the victim was The main ingredient for attracting 16 years. section 4 of the POCSO Act, the victim must be a child which is defined under section 2(d) of the POCSO Act that a person who is below 18 years is called a child. Taking all aspects into consideration, I am convinced that at the time of occurrence the victim completed 16 years.
- 9. The victim is the niece of the accused. Ext-4 is the sketch map of the PO which shows that the house of the accused is adjacent to the house of the informant who is the father of the victim. In such a case, the evidence of the victim plays vital role. Ext-5 is the ejahar which shows that the accused about three months prior to the filing of Ext-4 took the victim on call and raped her there but she refrained from disclosing the incident out of fear. Ext-1 is the statement of the victim recorded under section 164 of the CrPC wherein the victim stated that the accused made sexual intercourse with her thrice and out of them once in the field and twice in his house. She further stated in Ext-1 that the accused threaten to kill her by administering medicine if she would disclose the incident to any body and that while menstruation circle for three

months she disclosed the incident to her sister-inlaw. From the evidence of the victim appears that the accused made sexual intercourse with her one time in his house.

- 10. According to the victim marked as PW-2, her cousin sister coming to the house of the accused on hearing her shouting found her undressed condition and seeing her, the accused fled away. Her evidence also shows that she first disclosed about the incident to his sister-in-law marked as PW-4. According to PW-4, the victim disclosed to her that the accused made sexual intercourse with her thrice and that the accused threatened to kill her if she would disclose the incident. From history told to the medical officer by the victim who examined her it appears that the accused made sexual intercourse with her trice. Ext-3 is the medical report shows that on examination of the victim her hymen was found absence.
- 11. It is evident that in the village Mel was held. PW-6 is one of the villagers who was present in the said Mel. According to him, in the said Mel Gaonbura, members of VDP and other were present and in the Mel the victim disclosed that the accused made sexual intercourse with her. It has been contended by the learned lawyer appearing on behalf of the accused that there is long three months unexplained delay in lodging of the ejahar. It is a case of a penetrative sexual assault upon a child who was below 16 years at the time of occurrence by her own paternal uncle. There is corroborative

that the accused threatened to finish her if she would disclose the incident to anybody else. Regarding delay what the Hon'ble Apex Court has observed in the case of **State of H.P. v. Sanjay Kumar** reported in " (2017) 2 SCC 51" is reproduced below:-

"24. When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in Tulshidas Kanolkar v. State of Goa [Tulshidas] Kanolkar v. State of Goa, (2003) 8 SCC 590: 2004 SCC (Cri) 44]: (SCC p. 592, para 5)-"5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

- 12. It is observed in **State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh**, (1996)

 2 SCC 384 in respect delay thus:-"8. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged..."
- 13. Considering discussion made above and observed made in the case laws cited above I find that explained given by the victim as to why she refrained from disclosing the incident to anybody else is natural and acceptable.
- 14. It has been further argued by the learned lawyer appearing on behalf of the accused that non examination of cousin sister of the victim who found her in undressed condition in the house of the accused is fatal to prosecution. He has also submitted that the evidence of the victim is not from contraction and doubts. It is the established

principle that the evidence of the victim of sexual assault case does not need to be corroborated. In case of a between the relatives, non interest relative witness does not like to come to the dock.

- 15. In Jitender Sharma Versus State (NCT of Delhi) reported in "2019 SCC OnLine Del 8266" regarding evidentiary value of the victim witness it has been observed thus:-"15. It is pertinent to observe that, the question whether conviction of an accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer res integra. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that, the sole testimony of the prosecutrix if found reliable, can be the sole ground for convicting the accused; and credit-worthy testimony of the victim in cases of such nature deserves acceptance."
- 16. Of course there are some minor contradictions available in the evidence of the victim but said contradictions are not material point. Defence has failed to bring on record that there was an enmity between the accused and family members of the informant who is the father of the victim. I find that the defence has failed to bring any thing as to why the victim falsely deposed. Considering all aspects I find no way to disbelieve the evidence of the victim.

ORDER

- 17. In the result, I find the accused person guilty under section 4 of the POCSO Act and accordingly he is convicted.
- 18. On the point of sentence, the accused person is heard and to that effect his statement is recorded. It has been submitted by the learned lawyer appearing on behalf of the accused that the accused deserves to be punished leniently as there is nothing on record showing he was earlier convicted by the Court of Law and that he is a man of 71 years old. He has further submitted that presence of the accused in his family is highly required. On the other hand, learned Public Prosecutor appearing on behalf of the state has submitted that the accused needs to be punished exemplary. Taking all aspects into consideration I do hereby order the accused Sri Robin Gogoi to undergo RI for 7 (Seven) years and to pay fine of Rs. 5000/- i/d SI of 6 (Six) months. Let the fine money be paid to the victim through her informant father if realized. Set off his earlier detention periods. Let a certified copy of the Judgment be supplied to the accused person at free of cost. Let a copy of the Judgment be sent to the learned District Magistrate, Diphu, Karbi Anglong in terms of the section 365 of the CrPC.
- 19. Considering financial condition of the informant who is the father of the victim, I am of the opinion that the victim needs adequate financial assistance for her rehabilitation. The compensation awarded under section 357 of the CrPC to the victim is not adequate. Hence, I do hereby award Rs. 50,000/- as

a compensation under victim compensation scheme as laid down under section 357 A of the CrPC to be paid to the victim through her informant father by the DLSA, Karbi Anglong, Diphu. Let a copy of the Judgment be sent to the Secretary DLSA, Karbi Anglong, Diphu for information and necessary action.

- 20. Accordingly this case is disposed of on contest.
- 21. Given under my hand and seal of the Court on this 07th June, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS)
AJS)
Special Judge
Diphu, Karbi Anglong, Assam
Anglong,

(Md. A.U.Ahmed,

Special Judge Diphu, Karbi

APPENDIX

Prosecution Witnesses:

PW1- Shri Harur Gogoi

PW2- Miss Wanti Gogoi

PW3- Sri Babul Gogoi

PW4- Smti Sapna Gogoi

PW5- Smti Aruna Kerketa

PW6- Smti Bichitra Induwar

PW7- Dr. Jacqueline Teronpi

PW8- Shri Joseph Kevom

Defence Witnesses: Nil

Prosecution Exhibited:

Ext.1- Statement of the Victim

Ext.1A- Seizure List

Material Ext.1- School Certificate of the victim.

Ext.3- Medical Report

Ext.4- Ejahar

Ext.5- Sketch Map

Ext.6- Charge Sheet

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam