IN THE COURT OF SESSIONS JUDGECACHAR. <u>SPL. POCSO CASE NO . 15 of 2016</u>

(U/S 4 of POCSO ACT)

Present:-Shri K. Choudhury, LL.M.,

Sessions Judge,

Cachar, Silchar.

State of Assam	Complainant.
-Versus-	
	::::: Accused person
P.Ws. examined on :	08-09-16, 09-09-16, 28-09-16 & 31-10-16.
Statement of accused recorded under section 313 Cr.P.C :02-11-16.	
Argument heard on:	03-01-17.
Judgment pronounced and delivered on: 06-01-17.	
Learned Counsel Appeared	
For the State:-Mr.S.Dutta, Ld. PP.	
For the Accused :-Mr.D. Sengupta& Muktar Uddin.Advocate.	

JUDGMENT

1. Prosecution case in brief is that on 07-07-16 at about 9.00 p.m. when the minor daughter of the complainant, here in below referred as victim, was returning to her house from her outside toilet suddenly the accused caught hold her from behind, and gagged her mouth by a piece of cloth, and forcibly removing her wearing apparels committed rape on her

for about five minutes. During tussle the tying clothe got loose and she could raised alarm calling her mother. Accused then jumped up and kicked her causing injuries on her right leg. Her mother came out and took her to their house. The matter was informed to her father who then informed the matter to the parents of the accused who drove them out with threatening.

- 2. To this effect FIR was lodged. The same was registered as Kachudaram P.S. case No. 77/16 U/S 447/506 IPC R.W. Sec. 4 of Protection of Children from Sexual Offence Act 2012 (POCSO).
- 3. During investigation the victim was medically examined and she was also produced before the Magistrate for giving statement U/S 164 Cr.P.C. Doctor found her age as above 14 and below 16 years. On completion of the investigation the I.O. submitted charge sheet against the accused U/S 447 IPC R.W. Sec of 4 of the POCSO Act 2012. The accused was forwarded to this Court. Copies of all necessary police papers were furnished to the accused. After hearing both sides and consideration of the materials available on the record, this Court framed formal charge against the accused U/S4 of the POCSO Act. The charge was read over and explained to which the accused pleaded not guilty. Hence, trial began.
- 4. To prove the case prosecution examined as many as seven witnesses including the M.O. and the I/O. Defence plea is of false implication. Further plea is that the victim had some relation with one Kalam and the matter was reported on one or two times by the sister of the accused to the parents of the victim, and at the material time the victim was found gossiping with said Kalam and when the accused saw the same the victim rushed towards her house and on the way she fell on the

Courtyard. Accused during his examination U/S 313 of Cr.P.C. stated that at the material time seeing the victim standing near the toilet of the accused wanted to know as to why she was there at night. While making such query he threatened her. She out of fear being threatened rushed towards her house and on the way fell down on the Courtyard and raising hue and crymade false allegation.

- 5. Now, point for decision is as to whether, under the facts and circumstances of the case, the accused committed any penetrative sexual assault on the victim being punishable U/s 4 of POCSO Act.
- 6. To decide the above I have heard learned counsel of both sides at length and perused the evidence on record. Findings, decision and reasons thereof are given below:
- 7. PW. 1 is the mother of the victim. She deposed that on the very night of the alleged incident while she was taking meal, the victim went to latrine which is situated at some distance from their house. After some time hearing alarm of the victim she then came out and saw the accused to flee away from near the latrine. On query the victim told to her mother, P.W.1 that the accused removing her cloth outraged her modesty. After sometime when father of the victim returned home the matter was reported.
- 8. P.W. 2 Monilal Mohali, the father of the victim, deposed that on the night of the alleged incident when he returned home at about 9-30 p.m. the victim reported that at about 9.00 p.m. on the back side of their house near bamboo clump accused dragging her mouth made her fell on the ground. He then went to the house of one Monoj a VDP Nayak and reported about the incident with a request to make query. Monoj then came

to their house and consuled them. On that night one Noresh of their village also came to their house and told them to keep peace for the night. On the following morning some villagers and Noresh (VDP member) came to their house and expressed to settle the matter but failed. After that at about 1-30/2.00p.m. he (P.W.2) along with the victim, wife and brother Mathura went to the Police station and lodged ejahar. Ext-1 is the FIR. He further deposed that the victim daughter was reading perhaps in Class-X in Nikamoni High School and her age was 16 years.

PW. 3 – the victim of this case deposed that sister's house of 9. the accused is situated at a distance of around 100 meters from her house. On the night of alleged incident at about 9.00 p.m. she went to latrine situated at a distance of 40 feet from her house. There was bamboo bushes near the latrine. On the way back the accused caught hold her hair from the back and gagged her mouth with a 'gamcha' and started scuffling with her. The accused made her fell on the ground and removed her under garments. The accused also removed her clothes and had sex with her. During the tussle at the time of commission of sex the gamcha as fastened around her mouth got somehow removed and she raised alarm. She further deposed that the accused ride on her and hearing alarm got up and kicked her causing injury on her right petala and fled away. Hearing alarm her mother came and took her to their house. She reported the matter to her mother who started abusing the accused. After that when her father came she reported the matter to him. After that her father went to Monoj Lohar, a member of VDP and returned with Monoj. When Monoj came to their house the accused called her father from the Courtyard of his sister adjacent to their house demarcated by a bamboo fencing. The accused started saying her father about her behaviour. She then re-acted stating that the accused misbehaved with her. She further deposed that on the following morning the accused came to their house and stated that accused was not involved with the alleged offence but another was involved. Villagers also came and told to settle the matter by a bichar and asked her for treatment. They waited for about 12'0 clock and after that she along with her parents went to Kachudaram P.S. She disclosed the matter before the Magistrate and also doctor. Ext-2(1) is her signature in the medical report. Ext-3 is her statement. She categorically stated that she had no love affairs with said Kalam who is the cousin of the accused. She discontinued her study out of fear and due to slur on her character.

In the cross-examination she stated that she knew said Kalam from her childhood and she used to treat the accused as her brother. She further stated that the accused caught her from back side. At the time of alleged occurrence sister of the accused and his brother-in-law were not in the house and for that reason the accused was in the house of his sister. At the material time the said Kalam was a student of Class ix reading with her in the same school. M.Ext-1 is the registration card of the victim issued by SEBA.

10. PW. 4,Dr. Orina Raha deposed that on 8th July 2016 she examined the victim who alleged that on 7th July at around 7.00 p.m. when she was coming back from toilet outside her house a boy named as Bachhu Khan i.e. the alias name of the accused forcibly pulled her and tied her mouth and removing all her clothes had sexual inter course with her. The accused also kicked on her right knee for which she was having difficulty in walking. The M.O. further deposed that right knee of the victim was found swell on with difficulties in walking. According to the doctor on the basis of physical including dental examination, radiological and laboratory

examination age of the victim was found as above 14 years and below 16 years.

In the cross-examination the doctor stated that the mother of the victim was present and narrated the same history. Such type of injury on the knee can also be caused by fall at the time of running on hard substance.

- 11. PW. 5— Monoj Lohar deposed that, on 07-07-16 at about 9/9-30 p.m. father of the victim came to his house and took him. On query the victim told that on that night at about 9.00 p.m. on the way back from latrine the accused forcibly raped her and also assaulted on her right knee. He further deposed that at that time he was a Nayak of village Defence Party. The accused was found in the house of his sister adjacent to the house of the victim. On query the accused started altercating with the father of the victim and for that he returned.
- 12. P.W.6 Noresh Mala deposed that on the night of alleged incident at about 9-45 p.m. hearing hue and cry went to the house of the victim. He heard altercation in between accused and the father of the victim. On query father of the victim told that the accused used force on the victim. The victim told that the accused caught hold her and tried to fell her down. He did not ask anything more. He told them to keep peace for the night and on the following morning the matter will be taken care of.
- 13. PW. 7— I.O. of this case deposed that on 07-07-16 on receipt of the ejahar O/C of Kachudaram P.S. registered the case U/S 4 of POCSO Act. He was entrusted to investigate the case. During investigation he examined the victim and other witnesses. He visited the P.O. Ext-5 is

the sketch map drawn by him. Victim was produced before doctor and also Magistrate. On 08-07-16 he made attempt to apprehend the accused but the accused was found absconding. Thereafter on 09-07-16 on receipt of information to the affect that the accused was trying to flew away he visited Motinagar Bus stand and found the accused sitting in a magic car at around 7-30 a.m. Immediately the accused was apprehended. He further deposed that the P.O. was the back side of the homestead of the complainant, full of plants and tress including the bamboo plants where there was a toilet of the complainant. On the back side of the homestead of the complainant there was old bamboo fencing. Somewhere the fencing was found broken.

In the cross-examination he proved some omission as brought in the cross-examination of P.W.1 to the affect that when P.W.1 hearing alarm came out saw the accused to flee away.

During hearing learned P.P. has submitted that except some minor discrepancies here and there is no contradiction or any material omission to shake out the corroborative evidence of all the material witnesses. Further submission is that the presence of the accused at the material time near the P.O. is also an admitted fact and the defence suggestion to the affect that the victim had a relation with one Kalam, in the absence of any materials can be treated as mere hypothetical suggestion. It is also submitted that the defence plea as taken rather fortifies the prosecution case and there is no reason to disbelieve the natural and corroborative evidence of the material witnesses. Learned defence counsel argued that P.W.1 did not disclose about the commission of rape and the omission as confirmed in the cross-examination of I.O. to the affect that she hearing alarm—came out and saw the accused to flee

8

away shakes out her credibility. Further argument is that non seizure of any wearing apparels of the victim under the facts and circumstances of this case give rise to the doubt of genuineness of the prosecution allegation. Argument is also that the age of the victim is not proved by cogent evidence and there is no reason to disbelieve the defence plea.

15. While perusing the evidence on the record it is found that house of the sister of the accused is adjacent to the house of the complainant. Accused admitted that on that night he stayed in the house of his sister. Accused in his statement defence admitted his presence. According to him at the time of the alleged incident he found the victim near their (accused) toilet and seeing the same he wanted to know the reason of her standing near the toilet at night. He then threatened her, and she out of fear rushed towards her house and on the way fell down and raised hue and cry and told her mother that when she went to latrine the accused caught hold her. Hearing the same he raised protest. Her mother abused him. On return of the complainant he told the above incident but they did not pay any hid to the same and falsely implicated. The above disclosure made in the 313 Cr.P.C. statement corroborates the evidence of P.W.1,2 and 3 about the raising of alarm, coming of the mother of the victim, abusing the accused by the mother of the victim, coming of the father of the victim, and also altercation in between the accused and father of the victim at the material time. The accused did not utter anything with regard to the plea of relation between the victim and the said Kalam, cousin of the accused. The accused merely stated that he was falsely implicated. The accused also wanted to give explanation about the injury of the victim by fall on the ground. During cross-examination of the victim it has been categorically stated that she had no love affairs with Kalam. It is seen that the victim and her parents were cross-examined at length but the defence has failed to shake out their corroborative evidence. Other witnesses namely, P.W.5 and 6 also corroborated the evidence of material witnesses as reported witnesses about the alleged offence but also elucidated the subsequent circumstances. According to them they just after the incident arrived at the house of the victim and were reported about the alleged use of force etc. It is seen that the accused admitted the injury caused on the right knee of the victim. According to the accused it was caused due to fall being threatened by him. Although the defence took the plea of adducing false evidence by P.W.5 and P.W.6 but failed to bring anything in the cross-examination to shake out their credibility. The medical evidence about the age of the victim corroborate the evidence of material witnesses i.e. the victim and her parents. The Admit Card, M.Ext-1 shows that the name of the victim as a student of class-ix was registered in the year 2014. There is nothing in the record to show that the victim had to be detained in any class. Therefore, the evidence to the affect that the victim was aged about 16 years at the material time is cogently established and also proved by medical evidence. Evidence is found to be very natural and nothing is found for not putting explicit reliance the evidence of the victim corroborated by other witnesses especially while it is evident that relation between both the parties prior to the alleged incident was good. It is not believable that a girl of 16 years could have taken risk to jeopardize her character and reputation of his family by adducing false evidence. Similarly, no reason is also found to disbelieve the testimony of her parents P.W.1 and P.W.2. It is a fact that the victim did not disclose in her evidence that the accused had inter course with her but she stated that the accused removing her clothes and also his clothes ride on her and had sex. P.W.1 deposed that the accused outraged the modesty of the victim.

According to the father of the victim the accused made her fell on the ground. It is very natural that no girl would generally dare to disclose to her parents in detail about the entire incident. So also, generally no minor girl, in presence of male advocates reluctant to elucidate the actual offensive act in detail. In 164 Cr.P.C. statement before lady Magistrate she clearly stated that the accused committed sexualintercourse with her which continued for about five minutes. In the history as recorded by Lady Doctor shows that the accused performed sexual intercourse with the victim. On the point of having sex as adduced by the victim there is no cross-examination except denial suggestion. It is a fact that slightest penetration is enough under the law to constitute the offence of penetrative sexual assault.

- 16. In view of the above discussions and consideration of entire evidence on record it is held that prosecution case is proved beyond all reasonable doubt U/S 4 of POCSO Act. Accused is thus held to be guilty of the offence. He is thus convicted accordingly.
- 17. Heard the accused on the question of sentence. His statement are recorded in separate sheets tagged with the case record. He has submitted for leniency.
- 18. Having consideration of the above and due regard to all other aspects, the accused is convicted and sentenced U/S 4 of the POCSO Act to undergo Rigorous Imprisonment (R.I.) for a period of seven years. And also a fine of Rs. 2000/- and in default shall further undergo for a period of one month.
- 19. As regards victim compensation it is evident that the victim

belongs to a poor family of tea garden community and the victim while studying in Class –X had to discontinue her study out of fear of the accused and slur on her character. The victim also sustained injury which made her difficult in the movement and which continued for about one month.

20. Consideration of the above and all other aspects it is recommended that an amount of Rs. 100000/- may be paid as interim compensation to be paid to the victim or to the father of the victim. Further in case of claim of any further compensation the matter may be decided by DLSA after further due enquiry. Secretary DLSA will take appropriate step for payment of the interim compensation etc. Copy of the Judgment along with the deposition of P.W.1,2,3 be forwarded to Secretary DLSA for taking appropriate step for payment of compensation. Copy of the Judgment also be forwarded to the Secretary, Govt of Assam, Political Deptt. for taking necessary step for payment of compensation.

Free copy of the Judgment be furnished to the accused as per section 363 of Cr.P.C. and a copy also be forwarded to the District Magistrate as per section 365 of Cr.P.C.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 6^{th} day of January, 2017.

Dictated & Corrected by me

(Shri K. Choudhury), Special Judge. Cachar, Silchar. Transcribed by P.Dey, Stenographer -I (Shri K. Choudhury), Special Judge, Cachar, Silchar.

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR. SPL POCSO Case No. 15 of 2016.

APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1- Smti Jogeswari Mohali.

P.W. 2– Sri Monilal Mohali.

P.W. 3 – Smti Hiramoni Mohali.

P.W. 4 – Dr. Orina Raha.

P.W. 5- Sri Monoj Lohar.

P.W. 6 – Sri Noresh Mala.

P.W.7– Sri Suravath Singh.

(B) <u>DEFENCE WITNESSES</u>: - NIL.

(D) PROSECUTION EXHIBITS: -

Ext.1 – F.I.R.

Ext.1(1)— Signature of P.W.2

Ext. 1(2) – Signature of O/C Kachudram P.S..

Ext. 2 — Medical Report

Ext. 2(1)–Signature of victim(P.W.2)

Ext-2(3) & 2(5)— Signature of Dr. Orina Raha.

Ext-2(4) – Signature of Dr. Netromoni Kakoti.

Ext-2(6) - Copy of report of radiologist Dr. B. Pegu.

Ext.3— Statement of P.W.2

Ext. 3(1)to 3(2) – Signature of P.W.2

Ext. 4 – Police requisition.

Ext.4(1) &(2)–Signature of PW.4,

Ext-4(3) – Requisition for Medical examination.

Ext.5 – Sketch map.

Ext-5(1) - Signature of P.W.7.

Ext. 6 — Charge sheet

(E) <u>DEFENCE EXHIBITS</u>: - NIL

(F) COURT EXHIBITS: -

M. Ext. 1 — Registration card of SEBA.(proved in original)

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

(Shri K. Choudhury), Special Judge, Cachar, Silchar. 06-01-17:

Accused is produced from judicial custody. Judgment is prepared in separate sheets tagged with the case record.

It is held that prosecution case is proved beyond all reasonable doubt U/S 4 of the POCSO Act. Accused is thus held to be guilty of the offence. He is thus convicted accordingly.

Heard the accused on the question of sentence. His statement are recorded in separate sheets tagged with the case record. He has thus prayed for leniency.

Having consideration of the above and due regard to all other aspects, the accused is convicted and sentenced U/S 4 of the POCSO Act to undergo Rigorous Imprisonment (R.I.) for a period of seven years and also a fine of Rs. 2000/- and in default shall further undergo for a period of one month.

As regards victim compensation it is evident that the victim belongs to a poor family of tea garden community and the victim while studying in Class -X had to discontinue her study out of fear of the accused and slur on her character. The victim also sustained injury which made her difficult in the movement and which continued for about one month.

Consideration of the above and all other aspects it is recommended that an amount of Rs. 100000/- may be paid as interim compensation to be paid to the victim or to the father of the victim. Further in case of claim of any further compensation the matter may be decided by DLSA after further due enquiry. Secretary DLSA will take appropriate step

15

for payment of the interim compensation etc. Copy of the Judgment along with the deposition of P.W.1,2,3 be forwarded to Secretary DLSA for taking appropriate step for payment of compensation. Copy of the Judgment also be forwarded to the Secretary, Govt of Assam, Political Deptt. for taking necessary step for payment of compensation

Free copy of the Judgment be furnished to the accused as per section 363 of Cr.P.C. and a copy also be forwarded to the District Magistrate as per section 365 of Cr.P.C.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 6^{th} day of January 2017.

Dictated & Corrected by me

(Shri K. Choudhury),

Special Judge.

Cachar, Silchar.

(Shri K. Choudhuy),

Special Judge,

Cachar, Silchar.