DISTRICT : GOLAGHAT. HEADING OF JUDGMENT IN SPECIAL CASES :

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No.58/2016.

Arising out of G.R. Case No.193/2015.

U/S 6 of POCSO Act.

Present :- Shri S. K. Sharma, Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Shri Basanta Rajowar. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. S. Rahman,

Advocate, Golaghat.

Dates of evidence : 29.07.2017, 22.05.2018,

14.08.2018, 16.11.2018,

06.05.2019, 03.06.2019.

Date of argument : 17.02.2020.

Date of Judgment : 05.03.2020.

JUDGMENT:

- The accused Shri Basanta Rajowar, son of Late Kaka Rajowar, resident of Kathiatali Gaon, under Golaghat Police Station, District – Golaghat, Assam, here in this case, has been put to face the trial to answer the charge u/s 6 of POCSO Act.
- The fact as disclosed in the First Information Report (in short FIR), may in brief, be discussed as under -

That prior to six months of lodging the ejahar on 02.02.2015, at night of about 10 P.M., the accused induced the informant, i.e. the victim girl that he would marry her and then took her to the Sub-health centre situated near her house and committed rape on her, as a result of which she became pregnant for 5 months. The informant also alleged that though the accused person earlier promised to marry her, but later on, the accused refused to marry her and accused also threatened to cut up her family members.

- 3. On receipt of the written ejahar from the informant, i.e. the victim girl on 02.02.2015, the I/C of Kamarbandha Police Out post recorded the Kamarbandha Out Post GDE No. 26, dated 02.02.2015 and forwarded the said ejahar to the O/C of Golaghat Police Station for registration of a case. Accordingly, the O/C of Golaghat Police Station on receipt of the ejahar, registered the case being Golaghat P.S. Case No.103/2015, u/s 376/506 of IPC and endorsed S.I. Abidur Rahman to investigate 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. He also got the statement of the victim recorded in the Court. Then on completion of investigation, the I.O. submitted charge sheet against accused Basanta Rajowar u/s 417/376/506 of IPC, read with section 4 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 sides, my learned predecessor has framed charge

against the accused under section 6 of POCSO Act and the contents of the charge 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 7 witnesses including the M.O. and I.O. After closing the prosecution evidence, the statement of the accused was recorded under the provisions of Section 313 of Cr.P.C. The plea of the accused is total denial.
- 6. I have heard Mr. P. Bora, learned Special Public Prosecutor for the State and Mr. S. Rahman, learned counsel for the accused.

NOW THE POINTS FOR DETERMINATION ARE -

- 7. (i) Whether the victim was below eighteen years of age at the time of alleged occurrence?
 - (ii) Whether the accused before 6 months of lodging the FIR on 02.02.2015, at night of about 10 P.M., near the abandoned Sub-health centre of Kathiatali Gaon, under Golaghat Police Station, committed penetrative sexual assault upon the victim child more than once; and thereby, committed an offence punishable under section 6 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

Point No.(i):

8. P.W.5 is the Medical Officer Dr. Sanjit Phukan. His evidence reveals that on 03.02.2015, he was working at Kushal Konwar Civil Hospital, Golaghat as Senior Medical & Health Officer. On that day, at 11'45 P.M., he examined the victim girl, resident of Kathiatoli Gaon, under Golaghat Police Station, District - Golaghat in connection with Golaghat P.S. Case No.103/2015, u/s 376/506 of IPC on being escorted and identified by WPC-368 Smti. Jyoti Gogoi, vide OPD Registration Mo.1128

and gave the following finding with regard to age of the victim. X-Ray of the right wrist joint, right elbow joint, right shoulder joint and X-Ray pelvis shows proximal and distal epiphysis of humerus are fused. Proximal epiphysis of radius and ulna are fused. Distal epiphysis of radius and ulna are not completely fused. Epiphysis of bilateral illiac crest and ischeal tuberosity are not completely fused. Age is above 16 years and below 18 years vide X-Ray No.679, dated 03.02.2015. After examination, the Doctor, P.W.5 has opined that the age of the girl is below 18 years. Ext-2 is the Radiologist report and Ext-2(1) is the signature of Dr. Vikash Sarmah which he knew. In cross examination, P.W.5 denied defence suggestion that at the time of examination, the age of the victim was above 18 years. The above medical evidence, which takes precedence over the oral evidence, establishes that the victim was below 18 years of age at the time of occurrence.

Point No.(ii):

9. P.W.1 is the victim girl, who deposed in her evidence that the occurrence took place about one year back and on the day of occurrence, at about 10/11 P.M., at night, the accused came to her house. At that time, she was sleeping alone and her parents were also sleeping separately. Thereafter, the accused gave her inducement of marriage and then took her to the sub-health centre situated near her house and committed sexual intercourse with her and as a result of which, she became pregnant. Thereafter, the accused refused to marry her. Later on, she gave birth to a female child and the said child is now one and half year old. P.W.1 also deposed that the accused committed sexual intercourse with her by disrobing her and after the occurrence, the accused left her in her house. On the next day of the occurrence, she disclosed the matter to the people and after two days of the occurrence, she lodged the ejahar at Police Station. Thereafter, she was examined by Doctor and she also gave her statement before the Court.

In cross examination, P.W.1 has stated that prior to the occurrence, she was staying in the house of one Kalpana of Makrang Tea Estate. Before few days of the occurrence, she came to her own house. When she was staying at Makrang, then she had love affair with one boy, namely Babai. P.W.1 denied defence suggestion that her child was born from the side of Babai. She also denied defence suggestion that on the day of occurrence, the accused did not commit sexual

intercourse with her by disrobing her. When she was examined by Doctor, then Doctor told her that she became pregnant and at that time, she was pregnant by five months. P.W.1 also stated that when she gave her statement before the Court, then she stated therein that at the time of occurrence, she was 19 years old. She does not know what was written in the ejahar and the ejahar was written by one police person. She also denied defence suggestion that she deposed falsely that she became pregnant from the side of the accused in order to save herself. P.W.1 further stated that her elder brother married the younger sister of the accused. When her elder brother drove out the younger sister of the accused from his house, then the accused along with village people assaulted her elder brother. Her elder brother told her to lodge the instant case against the accused.

10. P.W.2 is the mother of the victim, who deposed in her evidence that the occurrence took place in the last year. When the victim became pregnant of 7 months, then she asked the victim and then the victim told her that the accused induced her to marry and then took her at night to the chamber of the hospital and there the accused committed sexual intercourse with her and impregnated her. The accused also told the victim not to disclose the matter to her family members.

In cross examination, P.W.2 denied defence suggestion that the victim did not state before her that she became pregnant from the side of accused. She also denied defence suggestion that the accused did not say the victim that he would marry her and then the accused took the victim to the hospital and committed sexual intercourse with her.

- 11. P.W.3 Shri Biren Ghatowar has deposed in his evidence that the victim is his uncle's daughter. About 3 years back, in one day, he came to the house of the informant and on the next day, a quarrel took place between the accused and the younger brother of the informant. He does not know regarding the occurrence.
- 12. P.W.4 Shri Lohit Gogoi has deposed in his evidence that he knows both the accused and the victim. The occurrence took place in the month of February, 2015. At the time of occurrence, he was the VDP Secretary of his village and after the occurrence, the father of the victim informed him that accused

committed rape on the victim in the health centre. Then he (P.W.4) advised the informant to lodge ejahar at Police Station.

In cross examination, P.W.4 denied defence suggestion that the father of the victim did not state before him that the accused committed rape on the victim.

13. P.W.6 Md. Abidur Rahman is the I.O. of this case, who deposed in his evidence that on 02.02.2015, he was working as In-charge at Kamarbandha Police Out Post. On that day, the informant, i.e. the victim girl has lodged an ejahar before the Out Post and on receiving the same, he made the Kamarbandha Out Post GDE No.26, dated 02.02.2015 and forwarded the said ejahar to the O/C of Golaghat Police Station for registration of a case. On receiving the ejahar, the O/C of Golaghat Police Station registered the case vide Golaghat P.S. Case No.103/2015, u/s 376/511 of IPC and endorsed him to investigate the case. During investigation, he visited the place of occurrence, examined witnesses and prepared sketch map of the place of occurrence. Ext-4 is the sketch map and Ext-4(1) is his signature. He also got the victim examined by Doctor and collected the report. Thereafter, he got the statement of the victim recorded in the Court. Then on completion of investigation, he submitted charge sheet against the accused u/s 417/376/506 of IPC, read with section 4 of POCSO Act to stand trial in the Court. Ext-3 is the ejahar and Ext-3(1) is his signature. Ext-5 is the charge sheet and Ext-5(1) is his signature.

In cross examination, P.W.6 has stated that the ejahar was lodged after six months of the occurrence and the victim girl told before him that at the time of occurrence, her age was 19 years. At the time of occurrence, there was love affairs between the accused and the victim. P.W.6 also stated that he did not collect the school certificate of the victim.

14. P.W.7 Shri Nirmal Kumar Laskar, the Sub-Divisional Judicial Magistrate (S), Jorhat has deposed in his evidence that on 04.02.2015, he was posted as Judicial Magistrate, First Class, Golaghat. On that day, the victim girl was produced before him for recording her statement u/s 164 of Cr.P.C. and at that time, the victim was escorted by WPC-368 Smti. Jyoti Gogoi in connection with G.R. Case No.193/2015. After ascertaining that the victim was ready to give her statement

voluntarily, he has recorded her statement u/s 164 of Cr.P.C. Ext-6 is the statement of the victim and Ext-6(1) is his signature.

Point No. (ii) :

- 15. The case against the accused is that he had sexual intercourse with the minor victim about six months prior to lodging of the FIR on 02.02.2015 and subsequently. Therefore, there is obviously a lengthy delay of about six months in lodging of the FIR.
- 16. It is a settled law that delay in lodging of the FIR is not always fatal to the prosecution case, provided that the delay is sufficiently explained.
- 17. However, a close scrutiny of the evidence of each P. Ws. fails to reveal anything by way of an explanation, let alone a sufficient one, for such a long delay in lodging of the FIR. Though it is the prosecution case that the accused had sexual intercourse with the victim on subsequent occasions as well, that has not come in the evidence of the victim herself or any other P.Ws.
- 18. It is ofcourse understandable that some delay may be occasioned in lodging FIR in cases of such nature as the honour of the family is involved. But the evidence on record nowhere discloses any deliberation having taken place amongst the family members of the victim consuming such a length of time in lodging the FIR. It is to be noted here that P.W.1 victim had stated in her examination in chief that she disclosed the occurrence to the people on the next day of the occurrence. But on the other hand, the mother of the victim (P.W.2) deposed that she came to know of the occurrence from the victim on being asked when the victim was seven months pregnant. Therefore, there is serious contradiction in the prosecution evidence as to the point of time when the victim disclosed the occurrence to a second person, which casts doubts on the prosecution version of the sequence of events. There is also no substantive evidence to indicate that the victim was prevented from lodging the FIR on account of any threats emanating from the accused or others.

19. With regard to the other aspects of the prosecution case concerning the credibility of the evidence of the victim, her evidence may be revisited. She had deposed that the accused had come to her house at 10/11 P.M. in the night, gave her promise of marriage, and then she, a girl on the verge of attaining majority, apparently acting upon such promise, accompanied the accused to the Sub-health Centre situated near her house and had sexual intercourse with him. There is no statement in her own evidence before the Court indicating a love relationship with the accused, laying the foundation for the alleged inducement and subsequent act. What however does transpire from the cross examination of the victim is that the younger sister of the accused was married to the elder brother of the victim, who had driven his wife out of their house after which the accused had, alongwith the village people assaulted the elder brother of the victim and her elder brother told her to lodge the FIR against the accused. This admission of the victim which also finds corroboration in the evidence of P.W.3, uncle of the victim, seriously compromises the prosecution case and the fact that the victim had come to stay at her new address in proximity to the house of the accused only a few days prior to the date of the alleged occurrence and prior to that she was living in another place where she had a love affair with another person, further probablises the defence version of non-involve of the accused. Moreover, the P.W.3, uncle of the victim who had deposed that he had visited the house of the victim/informant about three years back (from 22.05.2018, i.e. the date of deposition of P.W.3) which would be after the alleged occurrence., stated that he had no knowledge about the occurrence. According to P.W.4, VDP Secretary of the village, the occurrence took place in the month of February, 2015 and after the occurrence, the father of the victim informed him that the accused committed rape upon the victim. But at that point of time, i.e. February, 2015, the victim was already pregnant by 22 weeks as per the medical evidence. Therefore, the version of P.W.4 also does not support the prosecution case regarding involvement of the accused.

20. In view of the evidence discussed above, the defence has succeeded in dislodging the presumption of guilt of the accused and the prosecution has failed to bring home the same. In the result, the accused Basanta Rajowar is acquitted of the charge of offence u/s 6 of POCSO Act and set at liberty forthwith. His bail bond shall remain in force for a further period of six months from today.

Given under my hand and seal of the Court on this the 5^{th} day of March, 2020.

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

Dictated & corrected by me.

Special Judge, Golaghat.

APPENDIX:

WITNESSES FOR THE PROSCUTION:

- 1. P.W.1 The victim girl.
- 2. P.W.2 Smti. Rukmini Ghatowar.
- 3. P.W.3 Shri Biren Ghatowar.
- 4. P.W.4 Shri Lohit Gogoi.
- 5. P.W.5 Dr. Sanjit Phukan, M.O.
- 6. P.W.6 Md. Abidur Rahman, I.O.
- 7. P.W.7 Shri Nirmal Kumar Laskar.

WITNESS FOR THE DEFENCE : - Nil.

EXHIBITS FOR THE PROSCUTION:

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

EXHIBITS FOR THE DEFENCE: - Nil.

Special Judge, Golaghat.