# IN THE COURT OF ADDITIONAL SESSIONS JUDGE (FTC), DARRANG, MANGALDAI

PRESENT: Mr. J.M.Barman, A.J.S.,

Additional Sessions Judge(FTC),

Darrang, Mangaldai.

### Special (POCSO) Case No. 03 of 2018.

(U/S: 420/376 of I.P.C. R/W Section 6 of POCSO Act)

(Forwarded by the learned Addl. Chief Judicial Magistrate, Darrang, Mangaldai .)

State of Assam

-Versus-

Dhan Moni Nath @ Niranjan Nath,

S/O. Sri Bharat Chandra Nath,

Vill.- Chakiapara, P.S. Sipajhar,

Dist.- Darrang (Assam),

...... Accused person.

#### **APPEARANCE:**

Advocate for the State : Sri Dulal Kr. Ghosh, learned Addl.P.P.,

Advocate for the accused : Mr. M.M Nath , learned Advocate.

Date of framing charge : 12-01-2018.

Date of evidence : 24-01-18, 21-02-18, 02-04-18, 17-05-18,

27-06-19, 01-11-19.

Date of argument : 18.12.19

Date of judgment : 18.12.19

## JUDGMENT PROSECUTION CASE

1. The prosecution story, in brief, is that informant Mukunda Nath lodged an F.I.R. before the In-Charge of Patharighat Police Out Post on 8-10-2017 alleging that in the month of April, 2017 , the accused, having love

affairs with his daughter, aged about 16 years, with a promise to marry her, had committed sexual intercourse with her. After providing treatment to his daughter, now, he has come to know from the Doctor that his daughter in carrying pregnancy of 7 months. Hence this case.

#### **INVESTIGATION**

2. After appearance of the accused person, copies of the relevant documents were furnished to him by learned Special Judge, Darrang Mangaldai and after hearing the submission of the learned P.P for the state as well as learned defence counsel on the point of charge and after going through the relevant documents as furnished by the investigating officer under section 173 of Cr.P.C, learned Special Judge, Darrang, Mangaldai had framed charge against the accused person under section 420/376 of I.P.C read with section 6 of POCSO Act and content of the charges mention above were read over and explained to him to which he pleaded not guilty and claimed to be tried.

#### **TRIAL**

3. Learned Special Judge, Darrang Mangaldai after recording of 5 (five) numbers of the prosecution witnesses, has transfer the case record to this court for disposal. The prosecution side has examined as many as 6 (six) Nos. of witnesses and exhibited some documents in support of its case. Thereafter evidence for the prosecution side is closed and the statement of accused under section 313 Cr.P.C was recorded. The plea of the accused is of total denial. However, he has not adduced any evidence in his favour.

#### **Points for determination:**

a. Whether the accused, on or about prior to filing of ejahar on 08/10/17 under Sipajhar P.S. cheated Kalyani Nath, daughter of informant Mukunda Nath by dishonestly inducing her by promising to marry her committed sexual intercourse on her and thereby committed an offence punishable under Section 420 of Indian Penal Code?

**b.** Whether the accused on or about on the same period of time and place as above, committed rape on Kalyani Nath and thereby committed an offence punishable under Section 376 of Indian Penal Code read with Section 6 of the POCSO Act?

#### **DISCUSSION, DECISION AND REASONS THEREOF:**

- 4. I have perused the evidence on record of the prosecution side. I have also heard the submission of learned additional P.P appearing on behalf of the state as well as learned defence counsel
- 5. P.W-1 Dr. Lipika Bora, the medical officer deposed in her evidence that on 09-10-2017, she was working as Senior Medical and Health Officer at Sipajhar Block PHC. On that day on police requisition and in connection with Sipajhar P.S. Case No. 821/17, under section 376/420 IPC, she examined Miss Kalyani Nath, daughter of Mukunda Nath, Village- Senapatipara, P.S. Sipajhar who was escorted and identified by WHG Putuli Deka and found the following-

<u>Identification Mark-</u>1) One black mole on the left side of the cheek, (2) A small black mole over left side of the face.

**Physical Examination :** Height – 4 feet 3 inches, Weight – 40 K.G., Teeth-28 numbers, Hair- long, Axillary hair- developed, Pubic Hair-developed, Breast- developed, Hymen- not intact, Valve-developed, Uterus-bulky, Vagina-developed, Libia: Mazora -developed.

At the time of examination, no injury mark is seen in the private parts of the victim.

Vaginal swab examination for Spermatozoa- No spermatozoa seen.

**Radiological Examination:** X-ray for age determination was not recommended because the victim was pregnant. Examination of urine was advised but denied to do.

**Ultrasonography Report**: Reveals senile line fetus of  $31 \pm$  one week of gestation.

#### Remarks:

- 1. No injury mark seen on the private parts of the victim.
- 2. Vaginal swab for presence of spermatozoa and urine for pregnancy test was advised but not done by the victim.
- 3. X-ray was not recommended as the victim was pregnant.
- 4. USG shows  $31 \pm$  one week of live fetus.
- 5. No definite sign of rape was found at the time of examination.
- 6. She exhibited the medical report as Ext-1 and her signature as Ext-4 (1).
- 7. Her cross-examination is declined by the defence side.
- 8. P.W-2 Mukunda Ram Nath is the father and the informant of the instant case. He deposed in his evidence that he knows the accused. He deposed that his daughter (victim) appeared in the H.S.L.C. Examination in the year 2017. After passing out the H.S.L.C examination, she got admitted in the H.S. first year in Burhinagar College. While she was pursuing her study, they noticed the symptom of pregnancy on her body. Then they got her examined by the Doctor who had confirmed the pregnancy. Then she disclosed the name of the accused who had caused the pregnancy. Thereafter, he called the accused Dhanmani Nath to his house, but he did not come to his house and finally he lodged the ejahar before Patharighat out Post. He exhibited the ejahar as Ext-2, and his signature as Ext-2(1). At the time of incident the age of his daughter was 16 years.
- 9. In his cross-examination he deposed that he came to know about the pregnancy of his daughter after seven months pregnancy and during

those seven month his daughter did not disclose anything about her pregnancy. He deposed in his cross-examination that he has not disclosed about the fact of pregnancy of his daughter to his neighbouring people. He denied to a suggestion of defence side that his daughter did not disclose the name of accused person who was pregnancy to her.

- 10. P.W-3 (Dipti Nath) deposed that the victim is her sister-in-law and she knows the accused. Her parental house is situated at Barpeta and her matrimonial house is situated at Senapatipara. She is residing in her parental home. She came to know about the incident from her mother-in-law that the victim recorded pregnancy. Getting the aforesaid information, she came to her in-law's house and came to know that the aforesaid pregnancy was caused by accused Dhanmani Nath @ Niranjan Nath.
- 11. In her cross-examination she admitted that during her casual visit in her in-laws house she never saw the relation between the accused person and the victim. She further deposed in her cross-examination that she have not got any information about the incident from the victim.
- 12. P.W-4 (Atul Nath) deposed that he knows the accused and the victim is his niece 4/5 months ago the incident had taken place. He came to know that his aforesaid niece recorded pregnancy. Further, he came to know that the aforesaid pregnancy of the victim was caused by the accused.
- 13. In his cross-examination he deposed that prior to the incident, the victim, has not deposed anything about the relationship between victim and the accused person.
- 14. P.W-5 Smti Maya Nath is the mother of the victim and she deposed in her evidence that her husband has one Saloon. Therefore, he normally remains busy in the same. She is also a daily wage earner and therefore, her daughter /victim remains in the house alone. During aforesaid period, she noticed that her aforesaid daughter fails in her monthly

cycle. Then she got her examined in the Burhinagar P.H.C. After examination, doctor detected that she was suffering from iron deficiency and anemia and accordingly, doctor prescribed the medicines. However, after sometime, she developed symptoms of pregnancy. Therefore, she took her daughter to Deomornoi hospital and got her examined therein, wherein doctor after examination of her daughter opined that her daughter was carrying pregnancy of 7 (seven) months. After returning to their house from hospital and on being asked, her daughter told her that the aforesaid pregnancy was caused by the accused. Thereafter, they called the accused to their house but he did not come to their house and thereafter, her husband lodged the ejahar. At the time of incident, her age was about 16 years.

- 15. In her cross examination she deposed that she had not narrated about the incident of pregnancy of her daughter to her neighbouring. In her cross-examination she further deposed that after coming to know about the name of the accused person who is responsible for causing pregnancy to her daughter, she had informed the matter to VDP secretary namely Makhan Saikia and Bhadreswar Deka.
- 16. P.W-6 (Premankur Hazarika), the investigating officer deposed that on 8-10-2017, he was working as in-charge Patharighat out Post. On that day having received the ejahar lodged by the informant, he made a G.D. Entry No. 134 dated 8-10-2017 and forwarded the same to Sipajhar P.S. for registration of a case and he himself took up the charge of investigation. Finding the informant in the Police Station, he interrogated him and went to the place of occurrence and had drawn up a sketch map. Ext-3 is the Sketch Map and Ext-3(1) is his signature. He interrogated the witnesses in the place of occurrence and recorded their statements. On police requisition the victim was medically examined. The statement of the victim got recorded by the learned Magistrate in the Court under section 164 Cr.P.C. Thereafter, he collected the Medical Report of the victim. The accused was arrested in this case and

forwarded to the court. In the meantime on completion of the investigation, he submitted Charge-sheet against the accused under section 376/420 of I.P.C. He exhibited the charge-sheet as Ext-4 and his signature as Ext-4(1).

- 17. In the instant case, the complainant who is the father of the victim while lodging the ejahar before the police station mention the case of his daughter as 16 years. While adducing his evidence he reiterated that the age of his daughter at the time of occurrence was 16 years, although he has not mention the date of birth of his daughter. His wife (PW-5) also mention the age of the victim (daughter of PW-5) as 16 years. From the evidence of the medical officer it reveals, due to the pregnancy of the victim the radiological examination for determination of the age of the victim could not be done. Hence there is no any medical examination for determination of the age of the victim at the time of occurrence. The investigating officer failed to seize any document to ascertain the age of the victim at the time of occurrence, although he had collected one Xerox copy of the birth certificate of the victim. Even if, judicial notice upon the aforesaid Xerox copy of the birth certificate of the victim, is taken, it reveals that the date of birth of the victim is mention in the Birth Certificate as 19/05/1999. The ejahar was lodged by the father of the victim on 8/10/2017, wherein there is nothing mention regarding date of occurrence, although it is mention that incident had taken place in the month of April, 2017. So there is no any clear evidence regarding the exact age of the victim at the time of occurrence and even if we took the judicial notice of the Xerox copy and presume that the incident occurred in the month of April, 2017 then also victim is almost near the age of 18 years.
- 18. In the instant case, the victim could not be examined as she already expired during the trial. From the evidence of the complainant (PW-2) who is the father of the victim it reveals that he only came to know about the incident, while they had notice the symptom of

pregnancy upon the victim and while the doctor confirm about the pregnancy, then only victim had disclose the name of accused person who had cause pregnancy to her. From the evidence of the medical officer also it reveals at the time of filing the ejahar she was in seven months of her pregnancy. That means the victim in spite of having physical relationship with a person, has not narrated the incident to her parents. There is no any evidence from the parents ie PW-1 & PW-5 that their daughter had disclose that there was threat from the accused person not to disclose the aforesaid fact of physical relationship to her parents. So on the basis of the evidence of the parents of the victim, it can be said that even after having physical relationship with the accused person, the victim has not narrated anything to her parents, and in that circumstances it can be said that she is a consenting party for the physical relationship with the accused person.

19. The victim being the star witness, in a case under sexual assault case, the evidence of the victim more informants in determining the guilt of the accused person for the offence charge. But unfortunately, in the instant case the court has not get that scope for examination of the victim, as during trial period she had already expired. But from the statement of the victim given before the Judicial Magistrate under section 164 of CRPC, and the evidence of the parents of the victim, it appears that she is a consenting party for the sexual intercourse that has taken place along with the accused person, as when the symptom of pregnancy appears on her body then only on compulsion she has divulge the name of the accused person and in my opinion, circumstances on the basis of the aforesaid evidence the accused person cannot be held guilty to the charges levelled against him by the prosecution side under section 376 /420 of IPC read with section 6 of Pocso act. As I already discuss, as the prosecution side failed to prove the age of the victim, hence the provision of section 6 of Pocso act has not attract in the instant case.

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20. Considering all this aspect, in my considered opinion the

prosecution side failed to prove the charge against the accused person

under section 376 /420 of IPC read with section 6 of Pocso Act beyond

knowledgeable doubts. I therefore acquitted the accused persons from

the above mentioned charges and set him at liberty forthwith. Bail Bond

of the accused person shall be valid for the next six months from the

date of delivery of the instant judgment.

21. Judgment is delivered in open court.

22. Furnish a copy of the judgement to learned district magistrate

Darrang Mangaldai as required under section 365 of CRPC.

23. Given under my hand and seal of this court on this 18<sup>th</sup> day of

December 2019 at Darrang Mangaldai.

Sd. J.M.Barman
Additional Sessions Judge(FTC),
Darrang,Mangaldai.

Transcribed and typed by me:

<u>Smti S.Devi (Stenographer)</u>

(Contd....Appendix)

# **APPENDIX:**

## **Prosecution witnesses:**

PW: 1- Dr. Lipika Bora (M.O.).

PW:2 – Mukunda Ram Nath (Informant)

PW:3- Dipti Nath

PW:4- Atul Nath.

PW:5- Maya Nath.

PW:6- Premankur Hazarika (I.O.) .

## **Prosecution exhibits:**

Ext:1- Medical Report.

Ext:2- Ejahar.

Ext:3-Sketch map.

Ext-4, Charge-sheet.

**Defence witnesses:** Nil.

Sd. J.M.Barman

Additional Sessions Judge (FTC), Darrang, Mangaldai.