

DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:- Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 19th day of January, 2019.

SPECIAL (P) CASE NO: 30 OF 2016

Under Section

6 of the Protection of Children
from Sexual offences Act, 2012.

Read With

376(2)(i) of the Indian Penal Code.

State of Assam

-Versus-

Berth Tigga

..... Accused Person.

This case was taken up for final hearing on 17/1/19 in the presence of

Sri Basanta Gogoi..... Advocate for prosecution side.

Sri Krishna Konwar Advocate of the accused.

F.I.R was lodged on :::::::::::: 29.07.2016.

Charge framed on :::::::::::: 16.09.2016 & 02.11.2018.

Argument Heard on :::::::::::: 17.01.19

Judgment Delivered on :::::::::::: 19.01.19

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JUDGMENT

In this case the accused person is facing trial under section 6 of the P.O.C.S.O act 2012, and alternately Under Section 376(2)(i) I.P.C

1. The case of the prosecution is that, on 16.10.2015 the accused called the daughter of the informant Miss XX to work at their house and after that the accused induced her to have sexual relation with him, for which she became pregnant. It is also the case, that, at the time of the incident the age of the daughter of the informant was 15 years
2. That, after this incident the informant lodged an F.I.R before the Charaipung Police station, which registered its P.S case no 20/16. Police after investigation forwarded charge sheet U/S 4 of the Protection of children from Sexual offences Act, 2012, against the accused person. Thereafter, case was committed and charge U/S 4 of the Protection of children from Sexual offences Act, 2012 was framed against the accused person. That, at a later stage the charge was altered and Charge under section 6 of the Protection of children from Sexual offences Act, 2012 and alternatively (as per section 42 of the P.O.C.S.O act) Charge under section 376(2)(i) I.P.C was framed against the accused. The charge was read over and explained to the accused person to, which he pleaded not guilty and claimed to be tried. Prosecution examined 09 witnesses.
3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

4. In this case the points for determination are:-

- A) Whether, the accused committed aggravated penetrative sexual assault against the minor daughter of the informant?



Or, alternately,

- B) Whether the accused on 16.10.15 committed rape upon the daughter of the informant, who was below the age of 16 years at that relevant time?

5. Discussion decision and reasons for the decision

Here in this case, prosecution is to prove that, the accused has committed aggravated penetrative sexual assault upon the minor daughter of the informant. The allegation against the accused is that, he induced the minor daughter of the informant to have sexual intercourse with him and as a result of that sexual relation, the minor daughter of the informant became pregnant.

As per section 5(j)(ii) of the Protection of children from Sexual offences Act, 2012, whoever commits penetrative sexual assault on a child, which, in case of female child, makes the child pregnant as a consequence of sexual assault, commits aggravated penetrative sexual assault on a child.

Now let us scrutinize evidences on record, of this case, what is there on record, basing on which the prosecution is trying to prove the case against the accused.

Direct evidence

6. Here, in this case, prosecution examined the alleged victim of this case, as P.W2. The P.W2 in her evidence deposed that, accused is known to her being her neighbor. That, two years ago, on being called by the wife of the accused to help her in domestic work, she went to the house of the accused. On the day of the incident, while she was there, accused requested her to stay in his house and she stayed there. That, the accused by paying her Rs.60/- "cohabited" with her for 3 days. That, on detecting her pregnancy, after 2/3 months of the incident, she informed the matter to her mother Smti. Lakhi Tasa. That, her mother took her to hospital, where pregnancy was confirmed. That, her mother informed the matter to public. That, accused declined to accept the responsibility, for which her father filed this case. That, about a year back, she delivered one male child.

In the cross examination this P.W deposed that, she left her school several

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years back. That, she has not submitted any document on her age. That, while she was pregnant for about 3 months, she informed the matter to her mother and others. NGO people insisted them to file this case. That, she used to go to the house of the accused for work as domestic help. That, they were not willing to file this case and the case was filed by NGO.

Here, I have considered the evidence of the P.W2 (alleged victim) and found that, according to her, while she went to the house of the accused to work as domestic help, she and the accused had sexual intercourse as the accused paid her Rs.60/-. That, due to this physical relation, she gave birth to a male child.

Here, as per the P.W.2 she failed to place any documentary evidence concerning her age, although she deposed specifically that she was 15 years old, while the incident occurred.

The evidence of the P.W.2 failed to contain anything against the accused that, he used force to have the sexual relation with her. In this regard evidence of the P.W.2 shows that there was neither using of force by the accused nor any objection was there on her part.

The cross examination of the P.W.2 failed to bring out anything in favour of the accused concerning the point of his sexual intercourse with the victim and giving birth to a male child by the victim.

The essence of the evidence of the alleged victim is that, the accused had sexual intercourse with her and as a result she (victim) became pregnant and later, gave birth to a child. Here the evidence of the victim is clear and specific.

Concerning the point of consent and objection, it is clear that the present Protection of children from Sexual offences Act, 2012 has no room for the aspect of consent or no consent on the part of the victim. The act is clear that the action of the wrongdoer on a child below 18 years will attract the penal provisions of the act, regardless to the factor of consent or no consent on the part of the victim. Here in this case, evidence of the victim (P.W2) may fail to place anything that, accused had forced her to have sexual intercourse, but as mentioned above, that aspect is a no factor aspect, in this act.

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As per section 42 –A of this act the provisions of the act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

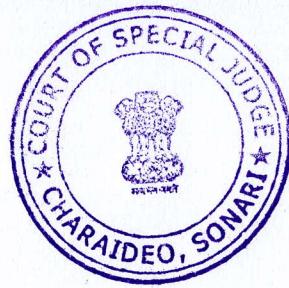
Other Evidences

7. In this case the informant is the father of the alleged victim, who was examined as P.W.3. The P.W.3 in his evidence deposed that at the time of the incident his daughter was 13/14 years old. That, on seeing symptoms of pregnancy on her daughter Tulsi Tasa, his wife asked her about the incident. That, on this Tulsi told that she was pregnant through accused Bartha Tigga. That, a village meeting was held in which accused declined to accept the responsibility. On his denial, as insisted by others, he lodged the FIR. That, one year back his daughter delivered one male child.

In the cross examination this P.W deposed that, victim Tulsi is his daughter and she did not go to school. That, he has not submitted any document on the age of his daughter to police. That, he has filed this case at the insistence of local SULFA boys. That, he is not aware about the contents of the FIR. That, he came to know about the incident while Tulsi was pregnant for about 4/5 months. That, his daughter used to go to the house of the accused to work as domestic help.

I have scrutinized the recorded evidence of the P.W3. The essence of the evidence of the P.W3/informant is that, 1) his daughter Tulsi Tasa, on the day of the incident was 13/14 years old. (2) That, his wife after noticing symptoms of pregnancy on their daughter, came to know about the incident.

8. The P.W4 is the mother of the alleged victim, who in evidence deposed that, at the time of the incident her daughter was 16/17 years old. That, on seeing symptoms of pregnancy on her daughter Tulsi Tasa, she asked her about the reason. That, Tulsi Told her that she became pregnant through accused Bartha Tigga. That, her daughter Tulsi told her that she went to the house of the accused to work as domestic help and stayed in the house of the accused for the night. The accused on two occasions committed physical relation with her and for the said relation she



became pregnant. That, a village meeting was held in which accused declined to accept the responsibility. That, after filing of this case her daughter delivered one male child.

In the cross examination this P.W. deposed that victim Tulsi is her eldest daughter. At present she is about 18 years. That, Tulsi never went to school. That, they have no document on age of her daughter.

I have considered the evidence of the P.W4/mother of the alleged victim. The essence of the evidence of the P.W4 is1) Her daughter was 16/17 years old at the time of the incident. 2) That, her daughter told her that she became pregnant due to her physical relation with the accused. 3) That, they have no document concerning the age of the victim.

Here, in this case, the evidences of the P.W3 and P.W4 (parent of the victim) are clear and specific. The P.W3 and 4 have corroborated the evidence of the victim i.e. P.W2.

9. The P.W5 in evidence deposed that, Tulsi used to come to their house for domestic work. She was unmarried. On seeing symptoms of pregnancy on Tulsi Tasa, she asked her about the cause of pregnancy. Tulsi told her that she was pregnant through accused Bartha Tigga. That, a meeting was held in which her husband has accepted the responsibility. On his denial to accept Tulsi, father of Tulsi lodged the case.

In the cross examination this P.W deposed that, at the time of her marriage, Tulsi might be aged about 11/12 years. That, her eldest daughter is presently 13 years old. That, while Tulsi used to stay in their house, she used to sleep with her. In her absence never used to stay at her residence.

This P.W is the wife of the accused and as per her evidence the accused accepted his responsibility, concerning the pregnancy of the victim. This P.W also noticed that the victim was having symptoms of pregnancy. This P.W is one of the most material independent witnesses of this case, being the wife of the accused. This P.W5 clearly supported the evidence of the alleged victim as well as the case of the prosecution.

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10. The P.W.6 in his evidence deposed that victim Tusli Tasa and her father Suren Tasa are known to him, being resident of the same Tea Estate. That, from neighboring residents, he heard that Tulsi was pregnant through accused Bartha Tigga. At that time Tusli was unmarried. That, he heard that Tulsi gave birth to one male child. In the cross examination this P.W. deposed that he did not ask the victim about the incident.

11. The P.W.7 in his evidence deposed that from the parents of Tulsi Tasa she heard that Tusli became pregnant through accused Bartha Tigga. At that time Tusli was unmarried. That, he heard that Tulsi gave birth to one male child. In the cross examination this P.W. deposed that he did not ask the victim about the incident.

12. The P.W.8 in his evidence deposed that on 29.07.2016 he was posted as Officer-in-Charge of Charaipung Police Station. On that day at 4.30 P.M. complainant Suren Tasa lodged an FIR. That, he examined the complainant, victim and recorded statements. He visited the place of occurrence. He recorded statements of witnesses. Thereafter he was transferred from that police station, for which he has handed over the case diary to the new officer-in-charge.

In the cross examination this P.W. deposed that he was not given any document with the FIR to see the age of the victim. During his tenure no DNA test was conducted, neither applied. That, the victim did not tell him specifically that two times accused had co-habited with her, but said about three times. The P.W.5 did not tell her that accused caused pregnancy to the victim.

13. The P.W.9 in his evidence deposed that on 22.08.2016 he was officer-in-charge of Charaipung P.S. As the previous officer was transferred, he was handed over with the case diary of this case. That, he found that only medical report was to be collected in this case, so he collected it and forwarded charge sheet against the accused.

Scrutiny of evidences

14. Here in this case, the alleged victim i.e. P.W2 is the most important witness of this case. I have scrutinized her evidence and found that, through evidence, she

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specifically and clearly deposed that, the accused had sexual intercourse with her. It is clearly deposed that accused had sexual intercourse for three occasions, with her and the accused paid her Rs 60/. Here, the evidence of the P.W2 is specific that, accused had sexual intercourse with her. Also as per the P.W2 she reported the matter to her mother, and that, she gave birth to a male child, one year back. The cross examination of the P.W2 failed to bring out anything which may bring doubt over her evidence.

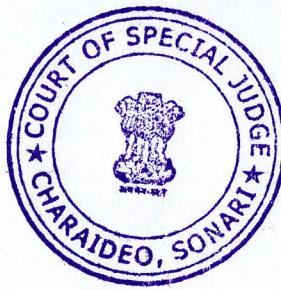
The evidence of the P.W2 consist of these following factual aspect ---- 1) Accused had sexual intercourse with her. 2) That, she gave birth to a male child, later on. and 3) from her evidence it can be gathered that at the time of the incident she was below 18 years.

As per section 5 (j) (ii) of the Protection of children from Sexual offences Act, 2012, whoever commits penetrative sexual assault on a child, which, in case of female child, makes the child pregnant as a consequence of sexual assault, commits aggravated penetrative sexual assault on that child. Here, in this case, as per the alleged victim/PW2, the accused had sexual intercourse for 3 occasions with her and for that reason she became pregnant and later on she gave birth to a male child. The evidence of the P.W.2 failed to contain anything against the accused that, he used force to have the sexual relation with her. In this regard evidence of the P.W.2 shows that there was neither using of force by the accused nor any objection was there on her part.

As mentioned above, concerning the point of consent and objection, it is clear that the Protection of children from Sexual offences Act, 2012 has no room for the aspect of consent or no consent on the part of the victim. The act is clear that the action of the wrongdoer on a child below 18 years will attract the penal provisions of the act, regardless to the factor of consent or no consent on the part of the victim. Here in this case, evidence of the victim (P.W2) shows that she may be a consenting party, but as mentioned above, that aspect is a no factor aspect, concerning P.O.S.C.O act.

The P.W3 is the father of the P.W2/ alleged victim of this case. He supported the case of the prosecution and the evidence of the alleged victim/P.W2. According to

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him, his wife was told by the alleged victim/their daughter that she became pregnant through the accused Birth Tigga. Further, his daughter gave birth to a male child.

The P.W4 is the mother of the alleged victim of this case. She also supported the evidence of the alleged victim and case of the prosecution. She, on seeing symptoms of pregnancy on her daughter/victim of this case, she asked her about the matter and was told by the victim, that, she became pregnant through the accused. She was also told by the victim that, while she went to work at the house of the accused and stayed in his house, accused had sexual intercourse with her, twice, for which she became pregnant. Here, also the mother of the alleged victim supported the evidence of her daughter/victim.

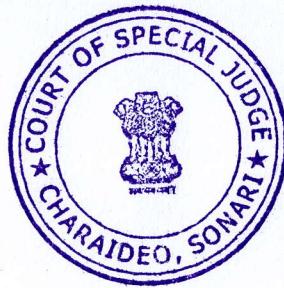
In this case the wife of the accused as P.W5 very clearly supported the evidence of the victim. According to her, the accused accepted his responsibility in a village meeting.

The cross examination part of these witnesses failed to bring out anything which may create any reasonable doubt.

In this case I have considered evidences of all P.Ws and found the followings:-

- 1) The evidence of the alleged victim is clear and specific that accused had sexual intercourse with her for which she became pregnant. That, at that time she was below 18 years old.
- 2) The P.W2 and P.W3 (parent of the alleged victim) supported the case of the prosecution. They noticed symptoms of pregnancy on their daughter/victim. The P.W4 was told by the victim that accused had sexual intercourse with her.
- 3) The wife of the accused as P.W5 supported the case of the prosecution. According to her, the accused i.e. her husband accepted his responsibility in a meeting, in causing the victim, pregnant. She also noticed symptoms of pregnancy on the victim.
- 4) Evidences of other witnesses also have supported the case of the prosecution.

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5) Cross examination of P.Ws failed to bring out anything to create doubt over the case of the prosecution.

15. Position of this case so far, is that, the alleged victim has adduced clear evidence that, accused had sexual intercourse with her. That, she became pregnant and at a later stage, gave birth to a child. The P.W4 (mother of the victim) was reported by the victim that accused had sexual intercourse with her. Here the alleged victim is a minor one, but her evidence is clearly corroborated by the P.W3, P.W4 and other witnesses.

In Yogesh Singh V/S Mahabeer Singh 2016 (7) Supreme 427 : AIR 2016 :SC: 5160. The Hon'ble Supere Court held that,

"Testimony of Child Witnesses"

22. It is well-settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law. (See Prakash Vs. State of M.P., (1992) 4 SCC 225; Baby Kandayanathi Vs. State of Kerala, 1993 Supp (3) SCC 667; Raja Ram Yadav Vs. State of Bihar, (1996) 9 SCC 287; Dattu Ramrao Sakhare Vs. State of Maharashtra, (1997) 5 SCC 341; State of U.P. Vs. Ashok Dixit & Anr., (2000) 3 SCC 70; Suryanarayana Vs. State Of Karnataka, (2001) 9 SCC 129).

23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. [Vide Panchhi Vs. State of U.P., (1998) 7 SCC 177].

Further, In Golla Yelugu Govinda V/S State Of A.P 2008 Cr.L.J 2607 (2609) (SC) it was observed by the Hon'ble Supreme Court that,

Indian Evidence Act, 1872 (in short the Evidence Act) does not prescribe any particular age as a determinative factor to treat a witness to be a competent



one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer J in Wheeler v. United States (159 U.S. 523). The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See Surya Narayana v. State of Karnataka (2001 (1) Supreme 1).

8. In Dattu Ramrao Sakhare v. State of Maharashtra (1997 (5) SCC 341) it was held as follows:

A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.

9. The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to

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any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness. "

Here in this case, in consonance with the Judgments mentioned above, this court has very carefully scrutinized the evidence of the alleged victim of this case who is a minor by her age. This court has scrutinized every aspect of the evidence of the child witness and did not find anything to discard or disbelieve the evidence. A careful scrutiny of that evidence yields the following points::::

- 1) The evidence adduced by the alleged victim is clear and straight, against the accused. Nothing can be gathered from her evidence, which may be disturbing towards acceptance of her evidence.
- 2) The cross examination failed to bring out anything against the concerned witness, for discarding it, rather it inspires confidence.
- 3) Other witnesses have clearly corroborated the evidence of the P.W2/ alleged victim of this case.

MEDICAL EVIDENCE

16. The P.W1 being the doctor who examined the victim, in his evidence deposed that, on 30.07.2016 he was working at Sonari Sub-Divisional Civil Hospital as Medical & Health Officer-I. On that day, at about 2.30 P.M. on police requisition, he examined



Tulsi Tassa, daughter of Sri Suren Tassa of Santipur Tea Estate, Line No.1 under Charaipung P.S. in connection with Charaipung P.S. Case No.20/2016 under Section 376 I.P.C. R/W Section 4 of POCSO Act. That, the victim was accompanied by WHG Mrs. Rupa Borgohain and she was examined in presence of female attended Mrs. Sunmai Baruah, Staff Nurse on examination he found as follows:-

Brief history- Physical intimacy.

General physical examination:-

General behavior – Normal, Mental status – Normal

Cloths – Changed. Findings – None

Built and nutrition – average. Weight 49 Kg.

Height- 5 feet. Teeth- Total 28 Nos.

Marks of violence on the body- Nil

Examination of genitalia-

There was no injury seen. Hymen- ruptured and old.

Forchette- normal. Clitories-Normal

Labia, majora and minora- Normal.

Vagina – Normal, injury- nil.

Discharge and stains – Nil.

Internal examination- Adnexa was free.

Laboratory examination:

Vaginal smear examination- No spermatozoa seen.

Pregnancy test for H.C.G. in urine- positive.

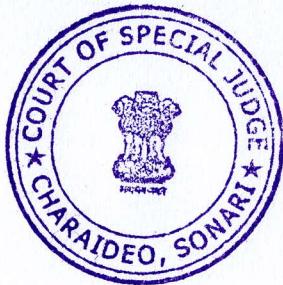
Ultrasonography- Single viable inter-uterine pregnancy of 34.4 weeks of gestation with cephalic presentation.

Rediological examination:-

X-Ray of left elbow joint reveals complete fusion of epiphysis around the elbow joint.

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X-Ray of the left wrist joint reveals incomplete fusion of epiphysis around the wrist joint reveals incomplete fusion of epiphysis around the wrist joint. On examination of Tulshi Tassa, he is of the opinion that – (i) her age is above 14 years and below 17 years, (ii) no mark of violence seen in her body, (iii) no spermatozoa seen in her vaginal smear examination and (iv) she was pregnant of around eight months. Ext.1 is the medical report and Ext.1(1) is my signature. Age of the victim is determined on the basis of the Radiological report given by Dr. Ranjit Hazarika, Radiologist. Ext.1(2) is the report given by Dr. Ranjit Hazarika.

I have considered the medical evidence of this case and found that, it reveals that the victim was pregnant at the time of her medical examination. Further the medical evidence also reveals that the hymen of the victim is found to be ruptured.

Here, the evidence of the alleged victim that, she became pregnant and her pregnancy was confirmed in hospital has been clearly corroborated by the medical evidence of this case.

17. I have considered evidences of the P.Ws and found that, they are specific to the question in controversy and have supported the case of the prosecution.

Age of the Victim

18. During argument it was argued that evidences on record failed to prove that alleged victim was below 18 years at the time of the incident, for which the case of the prosecution falls. I have considered this vital aspect. As per the P.W2/ alleged victim of this case, at the time of the incident she was 15 years old. According to the father of the victim i.e. the victim was 13/14 years old at the time of the incident. Here the mother of the victim i.e. as P.W4 deposed that at the time of the incident the victim was 16/17 years old. According to the Doctor (P.W1) on 30/07/16, the age of the victim was above 14 years and below 17 years. From the material evidences on record it is clear that the age of the alleged victim at the time of incident was below 18 years.

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In this regard the cross part of P.Ws failed bring out anything to doubt the evidences on record.

Legal aspect

19. As per section 29 of the POSCO act,"Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and section 9 of this act, the Special court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Here it is mandatory to presume that the accused has committed the offence for which he has been charged.

As per section 4 of the Evidence act, the term "Shall Presume" connotes that, "Whenever it is directed by this act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

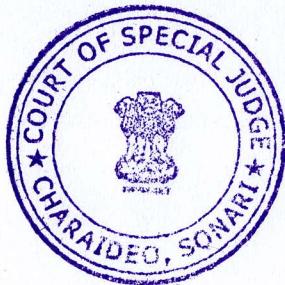
Here in this case, as per section 29 of the POSCO act, it is mandatory on the part of this court, to presume that, accused has committed the offence defined in section 5 of the P.O.C.S.O act, if not disproved by the accused.

The term "Disproved" as per Evidence act is as follows :-- "A fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist." I have considered the evidences on record and found that the accused failed place any cogent evidence basing on which the court either disbelief the case of the prosecution or considers its non-existence. On record there is nothing to disbelief the case of the prosecution. The accused did not place any evidence before court and the cross examinations failed to disprove the case of the prosecution.

POSITION OF EVIDENCES

20. If we place evidences on record of this case then, we will find the following positions.

- I) In this case the alleged victim clearly deposed that accused had sexual intercourse with her, resulting birth of a male child.



- ii) The material witnesses have corroborated the evidence of the alleged victim.
- iii) The independent witness has also supported the evidence of the prosecution.
- iv) The medical evidence supported the case of the prosecution.
- v) Evidences on record shows that at the time of occurrence, the alleged victim was below 18 years.
- vi) Cross-examination of the witnesses failed to bring out anything which may either disproves the case of the prosecution or create any doubt over the prosecution evidences.

ALTERNATE POINT FOR DETERMINATION.

21. Section 42 of the POCSO act 2012 reads as follows " Where an act or omission constitutes an offence punishable under this act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E, or section 509 of IPC then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this act or under the Indain Penal Code as provided for punishment which is greater in degree." The prescribed maximum punishment of section 376(2) (i) I.P.C is greater then, the maximum prescribed punishment concerning section 4 of the POSCO act.

Concerning the alternate point for determination, I have considered the evidences on record and the discussions made above. To attract section 376(2) (i) I.P.C the following conditions must be fulfilled. Condition no 1) That, there must be penetration of the penis in to the vagina of the victim. The penetration level may be to some extend only. Condition no 2) The victim woman must be below 16 years in age. 3) The action of the accused must be against the will of the victim. Here in this case, from the evidence of the alleged victim /P.W2 it is clear that neither accused used any force nor the action of the accused was without the consent of the victim. Considering this aspect, in opinion of this court, here, prosecution has failed to fulfill conditions against the accused, concerning section 376 (2) (i) I.P.C.

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22. Considering the concrete evidence on record, it is held that, prosecution has proved the case against the accused, beyond all reasonable doubt, under section 6 of the act. Here, the prosecution has proved all required ingredients to attract section 6 Protection of children from Sexual offences Act, 2012 act. The prosecution proved that accused caused pregnancy to the minor victim, after his sexual intercourse with her, resulting birth of a male child.

FINDINGS

23. By now the position of this case is clear that, accused is guilty of offences under section 6 of the Protection of children from Sexual offences Act, 2012. Perused the section 42 of the act and the discussions on the previous paragraph. Accordingly the accused Sri Berth Tigga is here by convicted under section 6 of the Protection of children from Sexual offences Act, 2012. I have considered the point as to whether the convict can be released under section 360 Cr.P.C or any other relevant law. In this regard record shows that, convict is 40 years. I have considered all aspects along with the position that accused had committed aggravated sexual assault upon a minor girl, which is the age of the granddaughter of him. Record shows that accused called the innocent girl to work in his house and by offering her money, he had sexual intercourse with her, resulting pregnancy towards the victim girl. The position is that the victim girl will remember the trauma rest of her life and there is less prospect that she will be able to lead normal life forgetting the foul incident and the son of the victim will be the most sufferer. Sexual intercourse of the minor girl, under the facts of this case, cannot be compared with any beneficial factor which may favor for release of an accused, unpunished. Here I have considered the age of the accused and found that, he is a mature person and is not an adolescent, having ignorant of the consequence of his action. The facts and circumstances of this case failed to bring anything which may require this court to release the accused, unpunished.

24. Heard the accused on the point of sentence. During sentence hearing the accused submitted that, he had sexual intercourse with the victim and now he is ready to take all responsibilities of the victim and the minor child. Except, this the accused



placed nothing before this court. I have considered all aspects of this case, the facts and circumstances of the crime, the possible outcome of the crime and is with the opinion that, accused is liable for adequate punishment and is not entitled for any lighter punishment.

In *Alister Anthony Pareira V/S State of Maharashtra : 2012 (2) SCC 272: the Hon'ble Supreme Court held that, Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of (an) appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objectives of sentencing policy is deterrent and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for crime, nature of the offence and all other attendant circumstances.*

In State of M.P. V/S Bablu Natt: (2009);2 SCC. 272 : the Hon'ble Supreme Court observed that, "The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature, particularly when Parliament itself had laid down minimum sentence. In India, we do not have sentencing guidelines. Necessity of the guidelines on the judicial side has been highlighted in State of Punjab vs. Prem Sagar & Others. [(2008) 7 SCC 550], wherein it was noticed:

"5. Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality,

Sr,
Special Judge
Charaideo, Sonari



would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

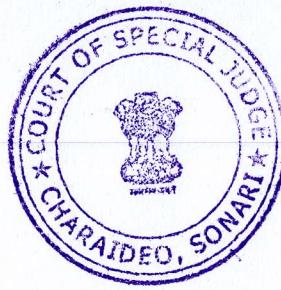
7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

25. I have considered all aspects of this case, through crime test, criminal test and the R-R test, in relation with proper sentencing of the accused. Considering the materials on record due to the age and possibility for reform of the accused, this court is with the opinion to sentence the accused with imprisonment.

8/4

**Special Judge
Charaideo, Sonari**



26. Accordingly the convict Sri Berth Tigga is sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rupees 5000/- (Five thousand only) in default S.I. for 5 (five) months under section 6 of the POSCO act. If circumstance arises, then, period undergone detention, so far, by the accused will be set off.

Considering evidences on record, as the victim is a girl and her son were living with her parent, this court is inclined to refer the matter to DLSA, Sivasagar, under section 375(A) Cr.P.C. Accordingly matter is referred to DLSA, Sivasagar under section 357(A) Cr.P.C. Furnish free copy to the convict.

Given under my hand and seal of this court on this the 19th day of January, 2019.

Symon
19/1/19
Typed by me.

(S.I. Rahman)
Special Judge
Additional Session Judge.
Charaldeo, Sonari
Charaideo, Sonari.

Symon
19/1/19
(S.I.Rahman)

Special Judge
Additional Sessions Judge.
Charaideo, Sonari
Charaideo, Sonari.



Appendix

Prosecution Witnesses.

- Sl. 1---- Prosecution Witness 1 --- Dr. Diganta Chetia
- Sl. 2---- Prosecution Witness 2 --- Miss tulsi Tasa
- Sl. 3---- Prosecution Witness 3---- Suren Tasa
- Sl. 4---- Prosecution Witness 4---- Smti Lakhi Tasa
- Sl. 5---- Prosecution Witness 5---- Smti Sachinta Tigga
- Sl. 6---- Prosecution Witness 6---- Sri Debaru Bagti
- Sl. 7---- Prosecution Witness 7---- Smti Nabanita Garh
- Sl. 8---- Prosecution Witness 8---- Prabhakar Singh

Prosecution Exhibits. 1. Medical report

Prosecution Exhibits. 1(1) Signature of P.W. 1

Prosecution Exhibits. 2 Sketch Map

Prosecution Exhibits. 2(1) Signature of P.W. 8

Prosecution Exhibits. 3 Charge sheet

Prosecution Exhibits. 3(1) Signature of P.W. 9

Defence witness.

Nil.

Defence Exhibit.

Nil

Suman
59/1/19
(S.I.Rahman)

Additional Sessions Judge: Sonari
Special Judge
Charaideo, Sonari
Charaideo