DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE, SIVASAGAR:

Ref. :- Spl. (P) Case No.04 of 2014

(Arising out of Moranhat P.S. Case No.243/2013)

### U/S 6 of POCSO Act.

Present: - Sri S. Khound.

Special Judge, Sivasagar.

The State of Assam : Prosecution

-Vs-

Sri Gultu Garh : Accused

## Appearance :-

For the prosecution/ : Sri A.K. Bora, State of Assam Public Prosecutor.

For the accused : Sri D. Gohain, Advocate,

(State defence counsel),

Sivasagar.

Dates of depositions : 01.09.2014, 27.10.2014, 27.11.2014'

19.03.2015, 23.04.2015

Date of argument : 24.06.2015

Date of Judgment : 02.07.2015

## JUDGMENT

- The accused Sri Gultu Garh, son of Sri Guru Garh, resident of Moran Rangoli under Moranhat P. S. in the district of Sivasagar, here in this case has been put to face the trial to answer the charge under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short the 'POCSO Act').
- 2. Keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence, it would be appropriate on the part of the court not to indicate the name of the victim in the judgment. This court has chosen to describe her as 'X' in the judgment.

- The fact as disclosed in the First Information Report (in short FIR) was that on 19.10.2013, at about 11.15 A.M. informant Smti Sunonti Mili, W/O Sri Ajay Mili of No.2 Balikhuti, Rangoli under Moranhat Police Station lodged an FIR before the O/C, Moranhat P. S. alleging that on 18.10.2013, at about 11 P. M. accused Gultu Garh kidnapped her minor daughter 噌 from the Pandal where Lakhipuja was celebrated at No.2 Balikhuti Gaon and thereafter committed rape on victim 噌 and prayed to take necessary action against the accused person.
- 4. On receipt of the Ejahar, police registered Moranhat P. S. Case No.243/2013 U/S 6 of the POCSO Act, and investigated into the case. Accordingly Investigating Officer visited the place of occurrence, prepared the Sketch ma, and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, sent the victim 噌 to the Civil Hospital for her medical examination and also forwarded the victim 噌 to the court for recording her statement U/S 164 Cr.P.C. and on completion of investigation, submitted charge-sheet against the accused under Section 6 of the Protection of Children from Sexual Offences Act, 2012.
- 5. On appearance of the accused person copy was furnished to the accused by the Court of learned Sub-Divisional Judicial Magistrate, Charaideo, Sonari and subsequently the case was committed to the court of the Hon'ble Sessions Judge, Sivasagar.
- 6. On appearance of the accused person before this court, my learned predecessor after hearing both the sides formally framed charge against the accused under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 7. To bring home the charge, the prosecution has examined the victim 噌 as P.W.2 and also examined seven other witnesses including M.O as P.W.1. Defence cross-examined the said P.Ws but adduced no evidence. The statement of the accused person is recorded U/S-313 of the Cr. P.C. Defence plea is of total denial.

#### THE POINT FOR DETERMINATION IS

8. Whether on 18.10.2013, at about 11 P.M. accused committed sexual assault on the victim 噌 who is below 12 years and thereby committed an offence punishable U/S 6 of the Protection of Children from Sexual Offences Act, 2012 ?

### **DECISION AND REASONS THEREOF:**

- 9. To arrive at a judicial decision, let the evidence on record be appreciated.
- 10. P.W.1 Dr. Nirmalya Choudhury deposed that on 19.10.2013 he was working at Sivasagar Civil Hospital as Senior Medical & Health Officer. On that day, at about 2.30 P.M. on police requisition, he examined Smti Dimpi Mili, D/O Ajoy Kumar Mili of 2 No. Balikhuti Gaon under Moranhat P. S. in connection with Moranhat P. S. Case No.243/2013 U/S 607 IPC. The victim was accompanied by WPC Runumi Dehingia and his findings are as follows:

**Identification marks**: One black mole over chest.

## General physical examination:

Built and nutrition fair. Weight 20 Kg.

Height 44 Inches. Teeth 12/12.

Marks of violence on the body Swelling over forehead,

left side measuring 2 cm x 2 cm x 1 cm. Redness over both eyes.

Development of hair, both axillary and pubic - normal.

Breast development normal.

# **Laboratory examination:**

Vaginal smear examination done on 19.10.2013, no spermatozoa seen. Ultra-sonography not done by the party though it was advised.

### **Examination of genitalia -**

Development of genitalia average.

Labia, majora and minora - average.

Fourchettee average. Hymen intact. Vagina normal.

Injury nil. Discharge and stain nil.

## **Abdominal examination:**

No abnormality detected.

# Radiological examination done on 21.10.2013:

Skiagram of left elbow joint reveals incomplete fusion of epiphysis. Skiagram of left wrist joint reveals incomplete fusion of epiphysis. Pisiform bone epiphysis not seen.

**Opinion :** On examination of Smti Dimpi Mili P.W.1 opinioned that she is under the age of 18 years at the time of examination. There was no sign of recent intercourse present during the time of examination. No sign of any recent injury detected on her person as well as in her private parts at the time of examination. The injuries already detected were simple and caused by blunt weapon. Ext.3 is the medical report and Ext.3(1) is his signature.

11. P.W.2 is the victim Smti Dimpi Mili who deposed that accused is known to her who is her neighbour. On the day of occurrence she went to a nearby shop to purchase rice where from the accused called her to a Tea Garden and gave her a slap. Thereafter accused removed her wearing apparels, as a result P.W.2 became unconscious. When she came to sense then she found that she had no wearing apparel on her body. Thereafter she came up running to her mother and reported the occurrence. P.W.2 also stated that she sustained injury on her private parts. Ext.2 is her statement recorded in the court where Ext.2(2) and Ext.2(4) are her signatures. In cross-examination P.W.2 deposed that on the day of Lakhipuja the occurrence took place and at that time she came to the shop alone. She further deposed that accused gave blow on her head and also strangulated, as a result of which she became unconscious. She denied defence suggestion that the father of P.W.2 did not repay the money to the accused which was borrowed from him and

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lodged false Ejahar against the accused. She also denied defence suggestion that she sustained no injury on her private parts and on being tutored by her father she has deposed false evidence against the accused.

- 12. P.W.3 Smti Sunonti Mili who deposed that victim 噌 is her daughter. On the day of occurrence her daughter went to a nearby shop to purchase Chana, but thereafter she became untraced. As a result P.W.3 and her family members searched her here and there but she could not be found. Ultimately the victim came out of the Tea Garden without having clothe on her body and reported that accused committed bad act with her. P.W.3 also noticed head injury of the victim and saw her eyes became reddish in colour. Thereafter P.W.3 lodged Ejahar which is Ext.3 where Ext.3(1) is her signature. In cross-examination P.W.3 denied defence suggestion that out of grudge she has deposed false evidence against the accused. He also deposed that police did not ask her in details regarding the occurrence.
- 13. P.W.4 is Sri Rupeswar Mili who deposed that on the very next day of the occurrence he came to know that the accused committed rape on the victim and she came on running to the Pandal where Lakhipuja was celebrated and reported the occurrence. In cross-examination P.W.4 deposed that he did not see the occurrence and also did not meet the victim after the occurrence.
- 14. P.W.5 is Sri Phatik Patir who deposed that accused is known to him. On 18.10.2013 the occurrence took place on which date Lakhipuja function was going on. On the very next morning he heard that accused Gultu committed rape on victim 噌 who was 7 years in age at that time. P.W.5 further deposed that he saw injury over the neck of the victim and also saw injury on her eyes. Thereafter she was treated in Hospital and brought back to her residence. In cross-examination P.W.5 deposed that he was not asked by police regarding the occurrence. P.W.5 further deposed that he did not see the occurrence.
- 15. P.W.6 is Sri Ajay Kumar Mili who is the father of victim 噌 deposed that on the day of occurrence victim 噌 along with her mother Sunonti Mili went to Lakhipuja function and on being reported regarding the occurrence over phone P.W.6 came to the Puja-Mondop and saw his daughter sustaining injury on her private parts. On being asked the victim reported that the accused committed bad act with her by removing her wearing apparels. On the very next morning the victim was taken to Sivasagar Civil Hospital. In cross-examination P.W.6 deposed that accused Gultu Garh was an employee of Tea Garden and some amount of money was due from P.W.6 by the accused and regarding non-payment of said amount an altercation took place with P.W.6 on the day of Lakhipuja. He denied defence suggestion that due to previous enmity regarding financial transaction with the accused he has deposed false evidence against the accused.
- 16. P.W.7 is the Investigating Officer Birinchi Konwar who deposed that on 28.04.2014 when he was on duty as O/C of Moranhat P.S. on that day on being entrusted by S.I. P.P. Singh he took the charge of investigation of Moranhat P.S. Case No.243/2013. During investigation he found that the investigation was almost completed, as such he simply submitted Charge-Sheet against the accused U/S 6 of POCSO Act. Ext.4 is the Charge-Sheet where Ext.4(1) is the signature of P.W.7. In cross-examination P.W.7 deposed that he did not investigate the case.

- 17. P.W.8 is another Investigating Officer Sri Partha Protim Singkom who deposed thatt on 19.10.2013 when he was Attached Officer of Moranhat P.S. on that day, at about 11.15 A.M. informant Smti Sunonti Mili lodged an Ejahar regarding alleged rape on her minor daughter by the accused Gultu Garh. Thereafter O/C Nilkamal Baruah entrusted P.W.8 to investigate the case. Ext.3 is the Ejahar where Ext.3(2) is the signature of O/C Nilkamal Baruah. During investigation P.W.8 visited the place of occurrence, recorded the statement of the victim and prepared Sketch map. Ext.5 is the Sketch map where Ext.5(1) is the signature of P.W.8. He further deposed that victim herself medically examined and her statement was recorded in the court. During investigation P.W.8 was transferred, as such Case Diary was handed over to O/C Birinchi Baruah. In cross-examination P.W.8 deposed that he recorded the statement of the victim in the Police Station. He denied defence suggestion that case was not properly investigated and without having any materials he has submitted Charge-Sheet against the accused.
- 18. To prove the charge of sexual assault the prosecution is to prove that accused with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- 19. From the evidence of P.Ws it is seen that P.W.3 being the mother of the victim, P.W.4 Rupeswar Mili, P.W.5 Phatik Patir and P.W.6 Ajay Kumar Mili - none of them are eye witness of the alleged occurrence. P.W.2 the victim who is the king pin of this case deposed that at the time of alleged occurrence she went to a nearby shop where from she was taken by the accused to a Tea Garden and then she was slapped, and thereafter accused removed her wearing clothes and immediately after that she became unconscious. So that part of evidence shows that the victim herself could not say whether the accused made aggravated penetrative sexual assault on her or not, because prior to the alleged occurrence of sexual assault she became unconscious. Though P.W.2, P.W.3 and P.W.6 deposed that after the occurrence the victim girl sustained injury on her private parts and she could not pass her urine properly, but that part of evidence is not supported by the medical opinion of P.W.1 who is the Medical Officer. P.W.1 in his medical report (Ext.3) opined that on examination of the victim he did not find any recent injury on her person as

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well as in her private parts. Moreover, the victim nowhere stated regarding sexual intent of the accused at the time of alleged occurrence. It appears that P.W.2 being the victim, P.W.3 and P.W.6 being her parents categorically stated that after the occurrence victim sustained injury on her head and victim had redness on both of her eyes and same is also opined by the Medical Officer (P.W.1). But mere sustaining injury by the victim over her forehead and redness of her eyes can not be the basis of conviction of the accused for the alleged offence of aggravated penetrative sexual assault on the victim since P.W.1 during medical examination of genitalia of the victim found no injury. On the other hand defence took the plea that the father of the victim was to pay some amount of money to the accused which he did not pay and to get rid of that liability a false case is instituted against the accused. In my view, considering the entire evidence on record the possibility of alleged false Ejahar out of grudge can not be ruled out.

- In the backdrop of foregoing discussions, and on careful scrutiny of the entire evidence on record I am of the view that the prosecution has failed to prove its case under Section 6 of the Protection of Children from Sexual Offences Act, 2012 against the accused person beyond all reasonable doubts. Accordingly I hold the accused is not guilty and he is acquitted of the charge of offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and set at liberty forthwith.
- 21. Judgment prepared, pronounced and delivered in the open Court under my hand and seal of this Court on this the,  $2^{nd}$  day of July 2015 at Sivasagar.

( Sri S. Khound. ) Sessions Judge, <u>Sivasagar</u>

Dictated & Corrected by me

( Sri S. Khound. ) Sessions Judge, <u>Sivasagar</u>