IN THE COURT OF THE SESSIONS JUDGE ::::: BONGAIGAON

Special (P) Case No. 19(BGN)/2017.

U/S 6 of POCSO Act.

(Arising out of Bongaigaon P.S. case No. 680 of 2017)

State of Assam

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Md Bahadur AliAccused.

<u>PRESENT</u>:- Smti. I. Barman, Special Judge (under POCSO Act), <u>Bongaigaon.</u>

Appearance:-.

For the State

: Smti R. Choudhury, Special Public

Prosecutor.

For the accused

: Sri S.Kr. Sarkar, Advocate.

<u>Date of Argument</u>: 04.08.2018.

Date of Judgment: 10.08.2018.

JUDGMENT AND ORDER

1. The prosecution case, in brief, is that the informant (PW 1) through her deceased husband gave birth of four children including the victim (PW 2). Later on, she married with accused Bahadur Ali and since then she alongwith her victim daughter aged about 16 years used to reside with her accused husband. It is stated that about one and half months back of the incident, she with her victim daughter and the accused husband used to reside in the house of Abul Kalam on

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rent at Bhowlaguri. During that period, on 10.9.2017 she keeping her victim daughter with the accused went to her parental house at Geda bazar for her treatment and taking advantage of her absence, on 13.9.2017 at night accused Bahadur Ali committed rape to her victim daughter.

- 2. FIR on the incident was lodged on 18.01.2016 by PW 1, the mother of the victim before the Incharge, North Bongaigaon Patrol Post.
- 3. On receipt of the FIR, the Incharge, North Bongaigaon Patrol Post forwarded the same to the O/C, Bongaigaon Police Station for registering a case. Accordingly, the O/C, Bongaigaon Police Station registered a case being Bongaigaon Police Station Case No. 680/17 under section 4 of POCSO Act and entrusted A.S.I. Siba Prasad Kalita to investigate the case. Accordingly, the Investigating Officer visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement U/S 164 CrPC, arrested the accused and on completion of investigation, laid charge-sheet against the accused Bahadur Ali under section 4 of POCSO Act.

4. On perusing police report and hearing both sides, having find a prima facie case, charge U/S 6 of POCSO Act was framed against the accused. The accused pleaded innocence when charge was read over and explained to him and claimed for trial.

Point for determination

Whether on 13.09.2017 at night, accused Bahadur

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Ali being the step father, committed aggravated penetrative sexual assault on the child victim under the age of 18 who resided in the same house with the accused.

- 5. In this case, to bring home the charge against the accused, prosecution has examined as many as 10 (ten) witnesses while defence examined none.
- 6. Statement of the accused was recorded U/S 313 Cr.P.C in which, he denied all the allegations levelled against him.
- 7. I have heard argument advanced by the learned counsel of both sides.

Discussion, decision and reasons there of:-

- 8. In order to appreciate the argument advanced on behalf of both sides, it is considered next to outline a sketch of the evidence on record.
- 9. PW 1 is the informant as well as mother of the victim. She deposed that at the time of incident she alongwith her accused husband and victim daughter born through her deceased husband, used to reside at Bhowlaguri in rented house of Abdul Kalam. She stated that prior to 3 days of alleged incident, she went to her parental house for her illness and then on being called by the victim when she returned home, her landlord Abdul Kalam questioned her as to why she left her victim daughter at home and also reported that accused Bahadur Ali had

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committed wrong upon her daughter. But the victim told her that she had been suffering from fever and the accused gave her some tablet after consuming which, she fell sleep and knew nothing. Then on suspicion, she filed the case on the pressure of villagers.

- 10. PW 2 is the victim. She deposed that at the time of incident due to ailment, her mother went to her parental house for treatment and after 2 days of leaving her with the accused, she also fell ill. Then accused Bahadur Ali gave her two tablets for recovery. Accordingly she consumed the tablets and fell asleep but when she awakened, she had found her 'frock' raising upto to the waist. Then she reported the incident to the land lady and after one day when her mother came, she reported her also. Then on suspicion, her mother filed the case. She stated that on the day of incident she alone was with the accused at home. During cross she stated that the accused did no wrong to her and as tutored, she gave her statement before the Magistrate.
- 11. PW 3 Abdul Kalam in whose house the informant alongwith the accused and her victim daughter were resided on rent testified that the informant often used to reside outside and in those days the victim had to stay with her step father accused Bahadur Ali alone. Hence on suspicion, he informed the VDP secretary and on being asked in presence of himself, VDP secretary, Gaonbura and other villagers, the victim told that accused Bahadur Ali feeding her some sex tablet did have sexual intercourse with her and the accused also admitted his guilt. Accordingly, on being informed, police arrested the accused. During cross he stated that he had not seen the incident.

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- 12. PW 4 Abdul Majid, the VDP secretary deposed that in most of the days, mother of the victim used to reside outside and hence often her victim daughter had to reside with her step father the accused person. Then the owner of the house suspected that some wrong was committed by the accused to the victim. Hence the villagers enquired the victim to which she replied that when she had been suffering from fever, the accused Bahadur Ali gave her some intoxicated tablet and then committed her rape and the same was admitted by accused Bahadur Ali. During cross he denied the suggestion that the fact of committing rape was neither told by the victim nor admitted by the accused before villagers.
- 13. PW 5 Rafique Seikh deposed that Abdul Mazid and Kalam, the owner of the house, where the accused with his wife resided on rent, told him and Musaraf that at night the accused Bahadur Ali committed rape on the victim. Then on being asked by them, the victim admitted that accused by administering the victim some tablet, raped her which was admitted by accused Bahadur Ali himself before them. Then they handed over the accused to police.

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14. PW 6 Musaraf Hussain categorically deposed that Kalam told them that accused committed rape on the victim and then on being enquired the accused, he admitted his guilt. He further deposed that the victim also narrated that the accused feeding her some tablets, raped her. During cross he stated that he did not remember the date of incident.

15. PW 7 Dr. Priyanka Ray, the medical officer deposed that on 16.9.17 she examined the victim and found hymen intact and admits one finger and urine test for pregnancy gave negative result. She found no injury on the body of the victim. She stated that as per X-ray of long bones, her age is above 16 years and below 19 years. She proved the medical examination report as Ext 1, advice slip as Ext 2, urine for pregnancy test as Ext 3 and age determination test as Ext 4. During cross examination PW 7 stated that as per x-ray report the victim may be more than 18 years but below 19 years.

- 16. PW 8 Dr Ranjit Kr Pradhan, the radiologist deposed that he examined the victim on 17.9.2017 and as per radiological report the age of the victim is above 16 years and below 19 years. He proved the radiological report as Ext 4. During cross examination he stated that the age of the victim may be above 18 years and below 19 years.
- 17. PW 9 Rahmat Ali, testified that a person of Bhowlaguri told him that the accused who resided earlier in his (PW 9) village, raped the victim. Regarding the incident police seized the school certificate of the victim vide Ext 5 wherein Ext 5(1) is his signature. He proved the school certificate as M.Ext 1. During cross he stated that neither he asked the victim nor her mother about the incident.
- 18. PW 10, A.S.I Siba Prasad Kalita, the investigating officer deposed that on 15.9.2017 on receipt of an FIR from the informant, the Incharge made the GDE No. 346 dated 15.09.2017 and after registering the case by the O/C, Bongaigaon Police Station, he was entrusted to investigate the case. Accordingly, he recorded the statement

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of the victim alongwith the informant and other witnesses, seized the school certificate of the victim vide Ext 5, visited the place of occurrence, prepared the sketch map of the place of occurrence, vide Ext 7, sent the victim for medical examination, got recorded her statement U/S 164 CrPC, arrested the accused and submitted charge sheet against accused Bahadur Ali under section 4 of POCSO Act vide Ext 9. He also proved the FIR as Ext 8, the extract copy of General Diary Entry no. 346 dated 15.9.2017 as Ext 6 and statement of the victim U/S 164 Cr.P.C as Ext 10. During cross he stated that the alleged incident occurred on 13.9.2017 and the FIR was lodged on 15.9.2017 without explaining the reason of delay. He confirmed that PW 9 Rahmat Ali did not tell him that the villagers had not reported him that accused had committed rape on the victim.

19. In this case, regarding age, the Investigating Officer (PW 10) seized a L.P school certificate (M.Ext 1) of the victim issued on 22.6.2015 as per which her date of birth is 2.2.2005. So as per school certificate on the day of the incident i.e on 13.7.2017, she was 12 years 7 months 11 days old. But the victim and her mother themselves claimed victim's age as 16 years at the time of the incident. On the other hand as per medical report (Ext 1), her dentition is 14/14 and she was asbove 16 years and below 19 years. However defence did not dispute the age of the victim.

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In the above let us see the evidence of the most material witness the victim herself. She as PW 2 stated that when her ailing mother went to her grand father's house for treatment, she fell ill Contd...

and then the accused her step father gave her two tablets for recovery and accordingly, having the tablets she slept and after she awakened, she noticed her frock lifting above waist which she reported their land lady and after return of her mother (PW 2) she narrated the incident to her mother also who on suspicion lodged the FIR but the accused never do any wrong to her. Close on the heels to the evidence of the victim, her mother PW 2 also stated that when she was in her parental house due to illness, the victim asked her to come home and accordingly when she returned home, Abul Kalam (PW 3) questioned her for leaving the victim alone at home with the accused and also reported that the accused had done bad act with the victim. But the victim told her only that in her (PW 1) absence when she had been suffering from fever, the accused gave her tablet for recovery. Then on pressure of the villagers, she lodged the FIR. Thus it appears that the victim and her mother themselves in deposition had not alleged commission of rape. PW 3 to PW 6 testified that in presence of villagers, the victim stated that the accused administering her some tablets, did have sexual intercourse with her and the accused also admitted the same but the victim herself in deposition has not alleged commission of any sexual act on her by the accused. The evidence of PW 3 to PW 6 also showed that as the victim resided with the accused alone at home in absence of victim's mother, hence out of suspicion they asked the victim to which victim stated the fact of sexual intercourse on her by the accused whereas the victim herself denied of any sexual assault on her and stated that on awakening, noticing her frock raising upon waist, she informed landlord PW 3's wife. So wife of PW 3 was material witness to whom she reported first. But she was not examined by prosecution. Though as per evidence of PW 3 to PW 6 the accused admitted his guilt before the

villagers but it is well settled that extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. In the present case the victim herself had not alleged the commission of rape. She in deposition clearly negates any sexual assault on her by the accused. Rather she stated that as tutored, she made statement before Magistrate. As per medical report also, hymen found intact and no injury was detected on her body.

- 21. In view of the above facts and circumstances, I am of the considered opinion that it is not a case of establishing the guilt of the accused beyond any shadow of doubt and consequently he deserves benefit of doubt. Accordingly, accused Md Bahadur Ali is acquitted of the charge U/S 6 of POCSO Act on benefit of doubt and set him at liberty forthwith. His bail bond shall remain in force till next six months.
- 22. Given under my hand and the seal of this Court on this 10th day of August, *2018*.

(I. Barman)
Special Judge
Bongaigaon.

Dictated and corrected by me,

(I. Barman)

Special Judge Bongaigaon.

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APPENDIX

Prosecution witness:

PW 1 – Informant as well as mother of the victim.

PW 2 – Victim.

PW 3 – Abdul Kalam.

PW 4 – Abdul Majid.

PW 5 – Rafique Sheikh.

PW 6 – Musaraf Hussain.

PW 7 Dr Priyanka Ray, M.O.

PW 8 Dr Ranjit Kr Pradhan, Radiologist.

PW 9- Rahmat Ali.

PW 10- Siba Prasad Kalita, I.O.

<u>Defence Witness:</u>

Nil.

Documents Exhibited by Prosecution:

Ext-1 Medical report.

Ext-2 Advice slip.

Ext-3 Urine for pregnancy test.

Ext-4 Radiological report.

Ext-5 Seizure list.

Ext 6- Extract copy of the GDE no. 346 dated 15.9.2017.

Ext 7- Sketch map of the P.O.

Ext 8- FIR.

Ext 9- Charge sheet.

Material Exhibited by prosecution:

M.Ext 1- LP school certificate of the victim.

Defence Exhibit:

Nil.

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