IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl(POCSO) 2 of 2019.

(U/S: 4 of POCSO Act)

State
Versus
Sri Paresh Nath
S/O Sri Keshab Nath
Village- Lawjan,
P.S.-Sipajhar,
Dist-Darrang(Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

Learned advocate for the State : Mr. Premeswar Sarma A N D

Learned advocates for the the accused: Mr. S.N.Basak.

Evidence recorded on :04/02/2019, 18/02/2019,

19/03/2019 & 03/04/2019

Argument heard on : 20/05/2019

Judgment delivered on :24 /05/2019

JUDGMENT:

- 1. The case of the prosecution in brief is that on 04/10/2018 one Bhaswati Deka lodged an FIR before the O/C, Sipajhar Police Station stating that the accused person plotted a drama of love with her and by calling her to his house, he contacted physical relationship with her. The accused tried to get her love by force. She was impregnated by the accused and the accused supplied her pregnancy terminating medicine and when she refused to take those medicine the accused did "marpit" on her. Thus, the accused terrorized the life of the informant Bhaswati Deka.
- 2. A case was registered against the accused on the basis of the FIR lodged against him. During investigation, Police got the statement of the victim recorded U/S 164 Cr.P.C. Police also got the medical examination of the victim done by the Medical Officer, Sipajhar PHC and finally a charge sheet was filed against the accused U/S 376(3) I.P.C. read with Section 4 of the POCSO Act.
- The accused person appeared before this Court. The written charge U/S 4 of POCSO Act, explained and read over to the accused to which the accused pleaded not guilty.

4. Point for determination:

(i) Whether the accused person had committed rape on the minor Bhaswati Deka?

REASON AND DECISION THEREON

- 5. In the course of trial, the prosecution examined PW1 Dipali Deka, PW2 Bhaswati Deka, PW3 Dr. Lipika Bora, PW3 Gobinda Deka, PW4 Tankeswar Deka and PW5 Abbas Ali(I.O.).
- 6. PW1 Dipali Deka, mother of the victim has stated in her evidence that the accused wanted to fall in love with her daughter Bhaswati Deka and to have it accused Paresh Nath went to the extent of beating Bhaswati, but Bhaswati never fell in love with the accused. The accused also demanded

money from Bhaswati. Therefore, Bhaswati finally lodged an FIR against the accused.

- 7. PW2 Bhaswati Deka has stated in her evidence that one day when she was on her way to tuition class at 7.30 a.m. the accused told her to go to his house. When she refused the accused threatened her to take his life. Thereafter, she followed him and reached the house of the accused. At that time nobody was in the house of the accused. In the house of the accused, the accused raped her and he also threatened her not to disclose the fact of rape to others. After three weeks, she informed about the matter to her mother. Before one week from the date of filing the FIR, the accused gave him some medicine and she took the medicine. She proved Ext.1 as her FIR.
- 8. PW3 Dr. Lipika Bora examined Bhaswati Deka on 05/10/2018 and found no injury mark on her private part and her vaginal swab also gives negative test of presence of spermatozoa, pregnancy test negative. As per radio logical report her age was 15 to 17 years at that time.
- 9. PW3 Gobinda Deka learnt that police caught accused Paresh Nath in connection with a case relating to girl. He was declared hostile by the prosecution.
- 10. PW4 Tankeswar Deka is father of the victim. He learnt from the victim that she was mentally and physically harassed by the accused. The accused also snatched away Rs.1800/- from her.
- 11. PW5 Abbas Ali took the charge of investigation of this case and after examining the case and also collecting the medical report of the victim etc. he lodged charge sheet against the accused.
- 12. The incriminating materials that come in the course of trial has been brought to the notice of the accused to which the accused pleaded innocent and decided not to give defense evidence.

- 13. The learned Public Prosecutor has submitted during the course of argument that the prosecution has been able to prove that the accused person had committed the offence of rape of the minor victim(PW2) Bhaswati Deka, besides harassing her by way of extorting money and causing physical assault on her. Therefore, an exemplary punishment should be given to the accused person.
- 14. On the other hand, the learned advocate for the accused has submitted before this Court that the prosecution has miserably failed to prove the offence of rape as because the evidence of the victim (PW2) Bhaswati Deka suffered from improbability and contradiction.
- 15. In our case as many as six witnesses were examined including the I.O. and M.O. Out of them three are the members of the same family including the victim. PW3 Gobinda Deka did not support the prosecution case. Hence, he was declared as hostile.
- 16. In the FIR(Ext.1) informant Bhaswati Deka(PW2) narrated a series of allegation against the accused, such as she was forced to make love with the accused, that she was tricked to come to the house of the accused where she was raped, that money was extorted from her by the accused, that she was made pregnant and thereafter, the accused provided medicine to her, that when she refused to take medicine she was beaten up by the accused. Out of this allegation she stood by some allegations in her evidence made before this court which are that the accused wanted make love with her and he restrained the victim from attending School, the accused also demanded money from her, that one day while she was on her way to tuition class she was come across with the accused who directed her to go to his house, that when she refused he threatened to kill her, that thereafter she reached the house of the accused and on that day she was raped by the accused, that the accused also threatened her not to disclose the fact of rape to other, that thereafter the accused provided her some medicine.

- 17. PW1 and PW4 are the parents of the victim. The evidence of PW1 was restricted only to the fact that the accused wanted to make love with her daughter Bhaswati and he demanded money from Bhaswati. Therefore, Bhaswati Deka lodged an FIR against the accused. PW4 Tankeswar Deka has stated in his evidence that her daughter Bhaswati was mentally and physically harassed by the accused. The accused had snatched total amount of Rs.1800.00 from Bhaswati in three occasions and Bhaswati was also subjected to physical assault. Thus, the fact of rape has not come in the evidence of PW1 and PW4 who are none, but mother and father of the victim.
- 18. PW3 examined the victim medically and found no injury mark in the private parts of the victim and pregnancy test was negative. The vaginal swab did not show presence of spermatozoa. Man may lie, but circumstances may not. Law envisages probability of the facts arrayed before the Courts. The commulative effect of the facts and evidence that come before the court matters. Therefore, a fact is judged from the angle of the perception of a prudent man.
- 19. It was held in Alamgirsani -VS- State of Assam reported in 2001(3) Cr.L.J. 205 that evidence must be weighed by reference to natural human conduct. It is an universally accepted fact that different persons react differently in different situation and human reaction and conduct ought not to be judged from a single perspective. The evidence of the victim and her parents is not consistent. Their evidence is also far from probabilities. Therefore, the evidence of PW2 and her parents is not believable. Thus, no case against the accused U/S 376 I.P.C. read with Section 4 of POCSO Act is found.
- 20. Thus, the accused Paresh Nath is acquitted and set at liberty forthwith.
- 21. The bail bond of the accused shall remain in force for next six months U/S 437(A) Cr.P.C.

22. Given under my hand and seal of this Court this 24th day of May ,2019.

(P.K.Bora) Sessions Judge Darrang,Mangaldai.

Dictated and corrected by me:

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

(A)Prosecution witnesses:

(i)Smti. PW1 Dipali Deka (ii)PW2 Sri Bhaswati Deka, (iii)PW3 Dr. Lipika Bora (iv)PW4 Gobinda Deka (v)PW5 Tankeswar Deka (vi)PW5 Abbas Ali

(B)**Defense witness**: Nil

(C)Exhibits:

(i)Ext.1 FIR (ii)Ext.2 statement of victim (iii)Ext.3 medical report. (iv)Ext.4 sketch map (v)Ext.5 charge sheet

> Sessions Judge, Darrang, Mangaldai.