IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 46 of 2016, U/S 6 of POCSO Act 2012 (Arising out of Halwating P.S. Case No. 89/2016)

State of Assam

-Vs-

Sri Kishna Pradhan @ Munna Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : SK. Shamsher, Advocate

Date of framing Charge : 19.01.2017, 27.02.2017,

Dates of Evidence : 13.02.2017, 30.03.2017, 14.06.2017,

12.09.2017, 03.04.2018.

 Date of S/D
 :
 08.05.2018

 Date of Argument
 :
 03.08.2018

 Date of Judgment
 :
 17.08.2018

 Judgment Delivered on
 :
 28.08.2018

<u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 09.10.2016, informant Smt. Anjali Mech, mother of the victim lodged an FIR with O/C, Haluwating P.S. alleging, inter alia, that on that day, at about 4 PM, while her daughter victim 'T' (name withheld), aged about 14 years was going by the side of Rail line, the accused Kishan Pradhan @ Munna by taking her to nearby jungle, committed rape on her.
- 2. On receipt of the FIR, Haluwating P.S. Case No. 89/2016, U/S 4 of POCSO Act, 2012 was registered and started investigation. During

investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced before this court for judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 354 (A) (2) IPC read with Section 12 of POCSO Act, 2012.

- 3. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 19.01.2017, initially charge U/S 354 (A)(2) IPC and Section 12 of POCSO Act, 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. Subsequently after recording evidence of informant and victim, vide order dated 27.02.2017, charge was altered and framed afresh u/s 4 of POCSO Act, 2012 and explained to accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined 7 witnesses including M.O. and I.O.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and SK. Shamsher, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

6. <u>POINTS FOR DETERMINATION ARE</u> -

- (I) What was the age of the victim on the date of alleged crime?
- (II) Whether the victim 'T' was subjected to rape/penetrative sexual assault on 09.10.2016 by the accused?

DECISION AND REASONS THEREOF

7. PW 1 Smt. Anjali Mech, mother of the victim, in her evidence deposed on 09.10.2016, while she returned home from fishing, her daughter told that while she went to call her, the accused restrained her and by putting stone in her mouth, has committed rape on her. On knowing this, on the same

day, she lodged the FIR. Victim was medically examined. At the time to incident, victim was a student of class IX and was aged about 14 years. In her cross-examination, PW 1 denied that her deposition as described is false as her daughter has not told her about any such incident.

- 8. PW 2 the victim T, in her evidence deposed that about 5 months back at about 4 pm, while she was going to call her mother, who went for fishing, on her way, accused Munna has restrained her and by putting stone in her mouth, committed rape on her. He took her to road side jungle area. He also threatened her that if, she disclose the incident to others, he will kill her. She restrained the accused in committing rape on her. After the incident, she returned home and informed about the incident of rape to her father and her sister-in-law Anima Mech. Her father told the incident to her mother. Villagers searched for the accused. Her mother took her to police station. She was medically examined by doctor. She gave her statement in court also. At the time to incident, she was a student of class IX and was aged about 14 years. Exbt. 1 is her statement given in court. In her cross examination, PW 2 denied the suggestion that she was not a student of Bongali Gari Gaon High School. She further denied that her allegation of rape by accused is false. PW 2 denied the suggestion that accused and his family has some quarrel with them on land dispute. She denied that while giving statement in court, she had not stated about committing rape by accused. She further denied the suggestion that as her story of rape is false, doctor did not find any sign of rape on her or any injury during her physical examination and she did not state before magistrate. She has no previous experience of sexual relationship with any boy. She denied the suggestion that due to family dispute, as tutored she has brought false allegation rape against the accused.
- 9. P.W. 3 Dr. Duplay Patir in his evidence deposed that on 12.10. 2016 on police requisition, he examined victim 'T', and found no marks of violence on her body. In his opinion the victim girl was below 18 years of age at the time of examination. There was no evidence of sign of recent sexual

intercourse and no sign of recent pregnancy detected at the time of examination. There is no sign of any injuries detected on her body or private part at the time of examination. Ext. 2 is the medical examination report. In his cross examination, PW 3 admitted that he has not taken the history from the victim.

- 10. PW 4 Sri Ardhen Mech, father of the victim, in his evidence deposed that on 09.10.2016, while he returned home from Puja he saw mud on the body and cloths of his daughter. On asking, his daughter told him that accused took her to rail line area in the Bagan and after putting stone in her mouth, committed rape on her. On knowing this, he went to search the accused. By that time police also arrived and apprehended the accused. At the time of incident, victim was a student of class IX and was aged about 14 years. In his cross examination, PW 4 denied that, he has shown age proof documents to police. He further denied that victim 'T' was above 18 years of age and to show her reduced age, he deposed falsely. PW 4 further denied that they have land dispute with the accused and concocted this case. He denied that while giving statement to police he have not stated that "he saw mud on the body and cloths of his daughter, that accused took her to rail line area in the Bagan and by putting stone in her mouth, has committed rape on her."
- 11. PW-5 Smt. Akanmani Saikia deposed that on 09.10.2016, while she was at her shop, she saw victim 'T' returning with mud on her dress and body. On asking, she told her that, while she went to call her mother from fishing site, accused took her and committed rape on her. In her cross examination, she denied that while giving statement to police, she have not stated that "while she was at her shop, she saw victim returning with mud on her dress and body. On asking victim told that, while she went to call her mother from fishing site, accused took her and committed rape on her." She denied the suggestion that she deposed falsely.
- 12. PW-6 Smt. Khemawati Mech deposed in her evidence that on 09.10.2016, while she returned after visiting Durga Puja Pandals, at about 6.30

PM, Anjali Mech came to her residence and informed that while she went for fishing, and the victim went to call her, on her way over rail line, the accused chased her, hold her and committed rape on her. On knowing this, she went to the house of informant, met the victim and asked her about the incident. Victim 'T' told her that at about 4 PM while she went to call her mother from fishing place, the accused Kishan Pradhan has chased her, hold her over rail line and committed rape on her by taking to nearby jungle. She also told her that accused has intimidated her for not to make cry and not to divulge about the incident to her mother. Victim also told her that she sustained injury on her leg due to scratch on stones. Later on mother of the victim filed the FIR. She wrote the FIR as dictated by Anjali Mech. Exbt. 3 is the FIR. Exbt. 3(i) is her signatures as scribe. In her cross examination, PW 6 denied that that while giving statement to police, she have not stated that "Anjali Mech came to her residence and told her about the incident." She further denied that while giving statement to police, she also have not stated that "On knowing this, she went to the house of informant, met the victim and asked her about the incident." PW 6 denied the suggestion that Anjali Mech and victim did not state about the incident as stated above to her. She denied that she and informant have land disputes with the family members of the accused since long. She denied to have deposed falsely to satisfy her grievances.

13. PW 7 SI Utpal Bora deposed in his evidence during investigation, he visited the place of occurrence i.e. near railway track at Jokai Paduli area and drawn a sketch map of the PO. Exbt. 4 is the said sketch map. Victim was sent to medical for examination and Court for recording her statement u/s 164 Cr.P.C. On completion of investigation, he has submitted charge sheet against the accused u/s 4 of POCSO Act. Exbt. 5 is the charge sheet. In his cross examination, PW 7 deposed that FIR was received by him on 09.10.2016 at 6.10 PM. Victim was sent on 10.10.2016 but medical report shows that she was medically examined on 12.10.2016. He denied the defence suggestion that as the case was false, by making conspiracy with the victim, he latterly sent the

victim to Hospital. He denied that without ascertaining the age of the girl, registration of the case under Pocso Act was illegal. He has not collected any document on the age of the victim. PW 7 admitted that witness Adhen Mech in his statement did not state before him that "He saw mud on the body and cloths of his daughter, that accused took her to rail line area in the Bagan and by putting stone in her mouth, has committed rape on her." PW 7 further confirmed that witness Akomani Saikia in her statement did not state before him that "while she was at her shop, she saw victim returning with mud on her dress and body. On asking victim told that, while she went to call her mother from fishing site, accused took her and committed rape on her." PW 7 also affirmed that witness Khemawati Mech in his statement did not state before him that "Anjali Mech came to her residence and told her about the incident." She further denied that while giving statement to police, she also have not stated that "On knowing this, she went to the house of informant, met the victim and asked her about the incident." He denied that, he has not investigated the case properly. The I/O in a question by court has deposed that witness Ardhen Mech in his statement before him simply stated that he heard the matter of commission of misdeed from his daughter.

- 14. From the above evidence o record, let me decide the points formulated for deciding the case.
- 15. <u>Point No. I:</u> So far age of the victim is concerned, P.W. 1, the informant as well as mother of the victim, P.W. 2 the victim and P.W. 4, father of the victim in their evidence stated that on the alleged date of incident victim was a student of Class-IX and was aged about 14 years. P.W. 3, the M.O. during examination basing upon X-Ray report opined that the victim was below 18 years of age. The I/O though admitted that he has not collected any document on age of the victim, yet from the evidence of parents as supported by medical officer, it appears that on the date of alleged incident the victim was below 18 years of age and is a child aged about 14 years.
- 16. <u>Point No. II:</u> So far the allegation of penetrative sexual assault by the Spl. (P) Case No. 46/2016 Page 6 of 10

accused, in the course of argument hearing learned Advocate for the defence has submitted that during investigation, the victim was brought to court and her statement was recorded u/s 164 Cr.P.C. and during trial said statement was proved as Exbt. 1 through the victim. It is further argued that in the said statement (Exbt.1), victim nowhere stated about any rape or penetrative sexual assault on her by the accused. She was totally silent and as such, the evidence of the victim during trial is apparently exaggerated. On the other hand, learned Special P.P. has argued that such facts should be treated as mere omission on the part of the victim and should be ignored and her evidence in court during trial should be accepted as true by invoking the provision of Section 29 of POCSO Act, 2012. I have considered the submission of both the sides.

During trial, in her evidence P.W. 2 the victim has stated that 17. while she was going to call her mother, accused restrained her and by putting stone in her mouth committed rape with her by taking her to road side jungle. She also disclosed that accused threatened her for not to disclose the incident to others, else she will be killed. She further deposed that after returning home she informed the matter to her father, her sister-in-law. Her father informed the incident to her mother and thereafter on the same day FIR was lodged by her mother. On looking at the Exbt. 1, the statement of the victim recorded u/s 164 Cr.P.C, on 13.10.2016 by learned JMFC, Sivasagar, it appears that while she was going to call her mother, accused restrained her, hold her neck and on making hue and cry accused put stone in her mouth and thereafter accused by giving criminal intimidation dragged her and torn her cloths and flew away from the place. Thereafter she returned home and informed the incident to her parents. So from this statement of the victim, it is clear that she is totally silent about any sort of penetrative sexual assault or even any incident sexual assault as defined u/s 3 and 7 of the POCSO Act 2012 on her by the accused. Her statement u/s 164 Cr.P.C shows that she was subjected to physical assault only. In her evidence, the victim was totally silent about pulling and torn of her cloth by accused. On looking at medical report Exbt. 2, as proved by PW 3, it appears

that on the date of examination i.e. on 12.10.2016, the medical officer did not find any sign of recent sexual intercourse or any injury on her person including private parts of the victim. This medical evidence supports the argument of the learned Advocate for the defence that, in fact no incident of sexual assault or penetrative sexual assault took place as adduced in the evidence. P.W. 1 and P.W. 4, (parents of the victim) and P.W. 5 and P.W. 6 who have heard the matter from the victim though stated that victim reported the matter of rape by accused to them, but the I/O has confirmed that before him the above witnesses did not state that victim has stated for commission of rape by accused. The evidence of the victim and the evidence of other witnesses as informed to them by the victim appeared to be exaggerated on material aspect. Hence, I am unable to accept the argument of the learned Special P.P. that non-disclosure of the incident of rape with her by the accused while giving statement in court u/s 164 Cr.P.C. should be treated as mere omission. In my considered opinion, the allegation of rape being the foundation of the charge and goes to the root of the case, it cannot be treated as mere omission; rather the same has to be treated as contradiction. The evidence of victim do not inspire any confidence for placing reliance without corroboration. It is in the statement of the victim that while she was going to call her mother, accused was standing infront of the shop of one Deepa and followed her. But the witnesses examined by prosecution are silent on this aspect. None has seen the accused in following the victim.

- 18. Considering the inherent major contradiction in the evidence of victim, and the fact that evidence of victim do not inspire confidence, Section 29 of POCSO Act 2012 also cannot be invoked in this case to draw a presumption against the accused.
- 19. Under aforesaid circumstance, the alternative argument of learned Spl PP that even if allegation of rape was found not proved, then also the evidence of the victim and the other witnesses relating to dragging the victim to road side jungle by using criminal force on her by accused and putting

stone in her mouth amounts to physical contract and advances involving unwelcome sexual overcharge, which amounts to sexual harassment as defined in Section 11 (IV) of the POCSO Act appears to have been reliable. I have also considered this aspect. It is the evidence of the victim that while she was going to call her mother, she was restrained and dragged by the accused towards jungle and while she attempted to make hue and cry, stones were put in her mouth. The other witnesses though in their examination in chief have corroborated the above version, but as admitted by I/O, there are exaggerations on the material point. Evidence of P.W. 1 shows that she came to know the incident from her daughter but the victim deposed she reported the matter to her father only who in-turn inform the matter to her mother. PW 2 never said that she directly informed the matter to her mother. Hence evidence of PW 1 also cannot be treated as relevant.

- 20. From the totality of the fact on record, I am of the opinion that prosecution has failed to prove the charge u/s 4 of POCSO Act 2012 beyond doubt and accused is entitled to get benefit of doubt. As such, accused Krishna Pradhan @ Munna is acquitted from the charges u/s 4 of POCSO Act, 2012 and set at liberty forthwith.
- 21. Bail bond executed by the accused and his surety stand extended for another six months from today.
- 22. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation U/S 357-A Cr.P.C.
- 23. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 24. It may be noted here that originally the case was fixed for judgment on 17.08.2018 but due to sudden declaration of holiday by State Govt. and case was re-fixed on 28.08.2018 and judgment was delivered today.
- 24. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 28^{th} day of August, 2018 at Sivasagar.

Special Judge, <u>Sivasagar</u>:

APPENDIX

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Smt. Anjali Mech (Informant)
 - P.W.2 (Victim)
 - P.W.3 Dr. Duplay Patir (M.O.)
 - P.W.4 Sri Ardhen Mech
 - P.W.5 Smt. Akanmani Saikia
 - P.W.6 Smt. Khemawati Mech
 - P.W.7 SI Utpal Bora (I.O.)
- 2. Defence witnesses None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 164 Cr.P.C. statement of the victim 'T'
 - Exbt.2 Medical report
 - Exbt.3 FIR
 - Exbt.4 Sketch map
 - Exbt.5 Charge-Sheet

Special Judge, Sivasagar: