### IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

# Spl(POCSO) case No.14 of 2019.

(U/S:376(AB) I.P.C. R/W Sec.4 of POCSO Act)

State
Versus
Sri Karuna Saharia
S/O-Bhumidhar Saharia
Village- Kapilistra
P.S.-Mangaldai
District- Darrang(Assam)

-- Accused.

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

### **APPERANCE:**

Learned advocate for the state : Mr. Premeswar Sarma,

 $\mathsf{A}\,\mathsf{N}\,\mathsf{D}$ 

Learned advocate for the accused : Mr. Mirja Gias

Evidence recorded on: 04/05/19, 17/05/19, 09/08/19, 26/08/19,

23/09/2019, 16/11/2019 and 02/01/2020.

Argument heard on :12/02/2020

Judgment delivered on: 19/02/2020

#### JUDGMENT:

- 1. The case of the prosecution in brief is that on 25/10/2018 one Geetamani Saharia lodged an FIR before the O/C, Mangaldai Police Station stating that on the same day at about 3-45 p.m. taking advantage of absence of any other person in her house, the accused entered into her house and raped her 9 year old daughter Miss X(real name is withheld). The illicit act of the accused was witnessed by her "pehi"(husband's younger sister) Chitra Kalita. In the FIR, it is also stated that the accused had also committed the same act. There was a threatening that the victim would be killed if the illicit act of the accused was informed to the guardian of the victim.
- 2. On the basis of the said FIR, Police registered a case and started investigation. During the course of investigation, Police got the medical of the victim done and also statement of the victim recorded in the Court. Finally, Police submitted charge sheet against the accused.
- 3. Since the charge sheet was filed in a Sessions triable offence, the learned Chief Judicial Magistrate forwarded the case to this Court. On his appearance before this Court, the written charge Under Section 376(AB) I.P.C. read with Section 4 of POCSO Act were explained and read over to the accused to which the accused pleaded not guilty.

# 4. Points for determination:

(i)Whether on 25/10/2018 at about 3-45 p.m. the accused committed rape on Miss X and thereby committed an offence U/S 376(AB) I.P.C. read with Section 4 of POCSO Act?

#### **REASONS AND DECISION THEREON**

5. In the course of trial, the prosecution examined PW1 victim Miss X, PW2 Gitamani Saharia Kalita, PW3 Smti. Chitra Kalita, PW4 Damayanti Saharia,

PW5 Amaya Kalita, PW6 Golbahar Begum, PW7 Dr. Mrs. Preti Rekha Saikia and PW8 Rajen Deka.

- 6. PW1 Miss X is at her age of 9 year when she was deposing before this Court. She was a student of Class IV of Mangaldai Nagar Balika L.P. School. Questions were put to her to study her knowledge and intelligent and also her ability to describe a situation. Thereafter, she was examined. In her evidence, she stated that on the day of incident at about 4 p.m. while she was playing with her younger sister Nirmali and one Tridip, the accused took her to her room and pulling down her pent he pushed his penis through her vagina. She made shouting out of pain, but at that time her mouth was gagged. In the meantime, her 'Pehi' Chitra Kalita piped through the window and noticed the illicit act of the accused. Thereafter, she made alarm. Impending danger the accused fled away.
- 7. In her cross-examination, she stated that the house of her maternal parents is situated near her father's house. Her grandmother Damayanti and Amaya Kalita were also residing with her. At that time grandmother Damayanti was out, but grandmother Amaya was combing her hair.
- 8. PW2 Gitamani Saharia Kalita has stated that on 25/10/18 at about 2.30 p.m. while she was attending her class at Deomornoi High School, she was brought back to her residence by her husband. When she reached she learnt from Chitra that the accused had made Miss X naked and contacted the penis of the accused over the vagina of Miss X. When Miss X was inquired about the incident she also reported that the accused had also committed the same act on previous occasion and asked not to tell anybody about the incident.
- 9. PW3 Chitra Kalita has stated that on 25/10/2018 at about 3.30 p.m. when she lifted curtain of the room of Gitamani Saharia, she noticed that the penis of the accused and the vagina of the Miss X were tightly contacted.

When the accused was told that he had spoiled the girl, the accused responded that it was an act out of love and affection. At that time people started to come at the place of occurrence. She informed the matter to her elder brother, who picked her wife from her classes.

- 10. It has come in her cross-examination that since 2005 she has been living in her mother's house because her husband married other girl. She denied the suggestion that she wanted to marry the accused, but the accused has no interest to her.
- 11. PW4 Damayanti Saharia has stated that on the day of the incident when the younger sister of her son-in-law made alarm she learnt that the accused Karuna had committed illicit act with Miss X by folding down her pent. She did not find the accused at the place of occurrence.
- 12. PW5 Amaya Kalita has stated that on the day of the incident she noticed that the accused Karuna entering into her daughter-in-law's house. At that time her daughter-in-law was absent. Immediately, she informed her daughter Chitra that Karuna had entered into her daughter-in-law's house. Chitra peeped through the window and noticed that Miss X was made naked and Karuna climbed on Miss X. When Chitra made a shout, Karuna fled away.
- 13. PW6 Golbahar Begum has stated that on the day of the incident when she heard about an incident of commotion in the house of Gitamani, she came out to the road and from the villagers she heard that Karuna had committed illicit act with Gitamani's daughter.
- 14. PW7 Dr. Mrs. Prity Rekha Saikia on 25/10/2018 at about 9.25 p.m. examined Miss X and found no injury on her private part.

- 15. PW8 Rajen Deka was asked to investigate the case by the O/C, Mangaldai Police Station. Accordingly, he got the statement of the victim and the medical of the victim done. He also arrested the accused and finally submitted charge sheet against the accused. The pent of the victim was not sent to FSL.
- 16. The accused person denied the indictments.
- 17. Heard argument advanced by the learned counsel for the sides.
- 18. In this case as many as eight witnesses were examined including the I.O. and M.O. Out of these prosecution witnesses, the evidence of victim Miss X and PW3 Chitra Kalita and PW5 Amaya Kalita is crucial. The victim Miss X narrated the story in this way that on the day of the incident at about 4 p.m. while she was playing with her younger sister Nirmali and one Tridip, the accused Karuna brought her to her house and she took a seat on the bed and he made her standing on the floor and thereafter she pulled down her pent and entered his penis through her vagina. She cried out due to pain. But at that time her face was gagged, that in the meantime the incident came to the notice of her 'pehi' Chitra Kalita through window. The evidence of Chitra Kalita is that on 25/10/2018 at about 3.30 p.m. while she lifted the curtain of the room of her 'bou' Gitamani, she noticed that both Miss X and Karuna are attached to each other by their sexual organs. Thereafter, she cried out which attracted the nearby people, but in the meantime the accused fled away. The evidence of PW5 Amaya Kalita is that on the day of the incident she noticed that the accused had entered into her daughter-in-law's room while her grand-child Miss X was alone. She informed the matter to her daughter Chitra and when Chitra peeped through the window she noticed Karuna on the body of Miss X making Miss X naked. In her evidence PW3 did not state that she learnt about the fact of accused entering into the room of Gitamani from her mother(PW5) Amaya Kalita. It has not come in the evidence of PW3 what made her to

see into room of her "bou" Gitamani through the window. Therefore, the evidence of PW3 inspires no confidence. It has also not come in the evidence of PW5 Amaya Kalita that as to why she told her daughter to go to her daughter-in-law's room instead of visiting her daughter-in-law's room by self and to inquire why the accused was visiting when her daughter-in-law was not available in her house. If the accused has an excess to the house of the informant then why PW5 Amaya Kalita was suspecting the accused and sent PW3 Chitra kalita to go to her daughter-in-law's room.

- 19. Therefore, the prosecution case rests on the evidence of the minor victim. According to the informant at the time of the incident the age of her victim daughter was 9 year. The evidence of a minor witness is not safe unless there is a corroborating evidence. A minor is susceptible to tutoring.
- 20. It was held in **Digambar Vaishnav** and another -VS- State of Chatisgarh(2019)4 SCC 522 it was held by the Hon' ble Apex Court that evidence of the child witness and its credibility could depends upon the facts and circumstances of its case. There is no rule of practice and in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration in such evidence from other reliable evidence placed on record. Only prosecution which the court has to bear in mind while assessing the evidence of a child witness is that witness must have a reliable one.
- 21. According to victim PW1 she was taken to her house while she was playing with two other kids. But the other two kids did not follow her. She did not state that at the time of the illicit act the accused kept the door closed. PW3 did not state that the accused committed the offence by keeping the door close from inside. A man of general prudence is not expected to

- commit an offence like rape of a minor girl in broad day light in a room keeping the door open.
- 22. Thus, our case rests on circumstantial evidence. In a case of circumstantial evidence there shall not be a slight situation to doubt the prosecution case. The chain formed by different facts must be a complete one. If there is a gap in that chain of facts the benefit will go to the accused.
- 23. In Narengbam Shyamkanhai Singh -VS- State of Manipur held in (2002)3 GLR 481 the Division Bench of Hon' ble Gauhati High Court it was held that---6. The law relating to circumstantial evidence is no longer res integra. The principles on which the culpability of the accused are to be judged by circumstantial evidence have been well settled by numerous judicial pronouncements on the question. The core of all such principles laid down basically stipulate a two-fold necessity. The circumstances against the accused must be fully proved by cogent, reliable and legal evidence and such circumstances must unerringly point to only one conclusion excluding all others namely, that the offence could not have been committed by anybody except the accused himself. Only if the aforesaid preconditions are satisfied judicial conscience will permit the charge against the accused to be held to be proved on the basis of circumstantial evidence of a case.
- 24. Thus, the evidence of the victim is not supported by corroborative evidence and circumstances found in the evidence of the other witnesses.
- 25. From the foregoing discussion, I am of the view that the prosecution case is not free from infirmities and improbabilities. As a result, the accused deserves benefit of doubt. Therefore, the accused Karuna Saharia is acquitted for want of clinching materials and the accused is set at liberty forthwith.

26. Given under my hand and seal of this Court this 19th day of February, 2020.

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

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

### APPENDIX:

# A)Prosecution witnesses:

(i)PW1 Miss X

(ii)PW2 Gitamani Saharia Kalita

(iii)PW3 Smti. Chitra Kalita.

(iv)PW4 Damayanti Saharia

(v)PW5 Amaya Kalita

(vi)PW6 Golbahar Begum

(vii)PW7 Dr. Mrs. Preti Rekha Saikia

(viii)PW8 Rajen Deka

(B) Defense witness: Nil

(C)Exhibits:

(i)Ext.1 statement

(ii)Ext.2 FIR

(iii)Ext.3 medical report

(iv)Ext.4 sketch map

(v)Ext.5 seizure list

(vi)Ext.6 charge sheet.

Sessions Judge, Darrang, Mangaldai.

> Typed by: Nareswar Deka Stenographer Grade-I