THE COURT OF THE SESSIONS JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 11 of 2016 U/S 4 of POCSO Act. (Arising out of Gelakey P.S. Case No. 54/2016)

State of Assam

-Vs-

Sri Sarat Koiri @ Anil Koiri Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P.P.

For the accused : Sri Biju Sarma, Advocate

Date of framing Charge : 16.06.2016

Dates of Evidence : 21.01.2017, 17.03.2017, 06.05.2017,

26.07.2017.

 Date of S/D
 : 31.10.2017

 Date of Argument
 : 31.10.2017

 Date of Judgment
 : 08.11.2017

<u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 14.04.2016, victim 'R' (name withheld) lodged an FIR with O/C, Gelakey P.S. alleging, inter alia, that about a year back of filing this FIR, accused Sarat Koiri used to visit her house in absence of her parents and by giving criminal intimidation of various nature proposed to love her, but knowingly that he was a married man she refused. On this, by giving threat of life, accused established illicit relationship with her and under compelling circumstances she consented for which she became pregnant. On informing this matter, the accused refused to accept her and neglected to receive her phone call. Presently she was pregnant for seven months.
- 2. On this FIR, Gelakey P.S. Case No. 54/2016, u/s 4 of POCSO Act, 2012 was registered and investigated into the case. During investigation,

accused was arrested and the victim was produced before the learned JMFC, Sivasagar for recording her statement U/S 164 Cr.P.C. and also got her medically examined. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 4 of POCSO Act, 2012.

- 3. After furnishing copy to the accused person, vide order dated 16.06.2016, my learned predecessor in office has framed the charge u/s 4 of POCSO Act, 2012 against the above named accused person to which he pleaded not guilty. During trial, prosecution has examined six witnesses including M.O. and I.O. Defence cross-examined the said P.W.s but adduced no evidence.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. Biju Sarma, learned defence counsel and gone through the evidence and documents.

POINTS FOR DETERMINATION ARE:

- 6. (i) What was the age of the victim on the date of incident?
 - (ii) Whether the victim 'R' was subjected to penetrative sexual assault by the accused against her will? If so, whether accused has committed offence of penetrative sexual assault?

DECISION AND REASONS THEREOF:

PW 1 Dr. Sundar Changmai in his evidence deposed that on 15.04. 2016, he examined the victim RB in connection with Geleky P.S. Case No. 54/16 and opined that during examination no any violence mark detected on her body and private parts. At present victim is carrying 33 weeks pregnancy. As per dentist opinion her age is below 17 years. He proved his report as Ext. 1. PW-1 further deposed that no lady doctor was present on the day of examination of the patient/victim. In his cross examination, he deposed that without conducting X-Ray, proper age cannot be determined. He stated that he is a

specialist in Gynecologist. He admitted that without obtaining any dentist opinion, he has mentioned the age of the victim/patient.

8. PW 2 victim RB in her evidence deposed that accused Sarat Kairi @ Anil is known to her being co-villagers. Accused is a married man having two children. About a year back, the accused has offered to grow love affairs with her but she denied as he was married. On her denial, taking advantage of staying alone in her house, accused came to her residence thrice and committed rape on her against her will by using force. On stoping of her menstrual period, she informed the matter to her aunt Rohila Bhuyan. On becoming pregnant, her father came to know about this and scolded her. On this, during her pregnancy of 8 months, she has to disclose the fact and told her father, aunt Rohila Bhuyan and cousin Maina Sahu that she become pregnant through the accused. Her father has informed the matter to gaonburah and village president but they did not turn up. On this, she lodged one FIR at Geleky PS. Police also took her for medical examination and brought her to court for statement. PW-2 further deposed that after about one month, she has delivered one girl child. Present age of her child is about 9 months. In her cross examination, victim admitted that Samra Ghatowar is known to her. About 6-7 years back, she married Samra Ghatowar. She denied that she has stayed with Samra Ghatowar for about one and half year. Samra was a resident of same locality. Residence of accused Anil is near to her residence. Accused Anil used to work as labour Sardar in the Tea Estate of Riajuddin. She used to work in the said T.E. and have acquaintance with the accused. After her return from the company of Samra Ghatowar, after three days, he came to her residence for taking her back. Victim denied that Samra Ghatowar maintains visiting relation with her. At the time of her marriage with Samra Ghatowar, she was aged about 14-15 years. Victim also denied that after leaving the residence of Samra Ghatowar, she and her family members have pressed the accused Anil Koiri to marry her. She also denied that on this, there was a quarrel and that accused has terminated her from the labour work of the T.E. Victim further denied that accused did not commit rape on her. FIR was written on her

dictation. Victim further denied that in her FIR, she has not mentioned of committing sex with force and against her will. Victim denied that she was not conceived through the accused. Victim admitted that immediately after the incident of alleged forcible sex, she did not inform the matter to anybody. She disclosed the name of accused as responsible of pregnancy only when she has completed eight months pregnancy. She denied that as accused was innocent as such, she did not disclose the name of accused for eight months. She denied that she has deposed falsely by implicating the accused and that accused was innocent.

9. PW 3 Sri Daria Bhuyan in his evidence deposed that accused Sarat Kairi @ Anil is known to him being co-villagers. Victim R Bhuyan is his daughter. When victim was pregnant for about 7 (seven) months, he came to know about her pregnancy. Then he inquired about her pregnancy but initially she did not disclose anything to him. On this, he requested Rohila Bhuyan to inquire the cause of pregnancy. Before her, his daughter victim R disclosed the incident. Thereafter, victim also told him that accused Anil @ Sarat Koiri came to her residence and committed rape on her on several days. Through him she become pregnant. She also told him that accused threatened her for not to disclose about the incident. On knowing this, he has informed the mater to Gaonburah and village president and they advised him to go Police Station. On this, his daughter victim R lodged one FIR at Geleky PS. Police interrogated him. Police also took the victim for medical examination and brought her to court for statement. PW-3 further deposed that about nine months back, victim R delivered one girl child. In his cross examination PW-3 stated that Samra Ghatowar is known to him. About 6-7 years back, victim was married to Samra Ghatowar. He denied that at that time victim was aged about 14-15 years. PW-3 stated that till seven months of pregnancy, victim did not disclose about her pregnancy. Accused Anil used to work as labour Sardar in the Tea Estate of Riajuddin. Victim used to work in the said T.E. as labour. He denied that victim was removed from the work of labour. PW 3 further stated that accused used to visit his residence. Rohila also told him about victim's pregnancy through

accused. He denied that victim R did not tell him that accused has committed rape on her. He denied that they have tried to give marriage of the victim with the accused to which he refused. His wife died long ago. He denied that accused was no way responsible for the pregnancy of the victim.

- 10. PW-4 Smt. Rahila Bhuyan in her evidence deposed that about a year back, one day victim R came to her and told that she was pregnant for about 7 (seven) months and that she was pregnant through accused Sarat Kairi. About 9-10 months back, victim R delivered one girl child. Police interrogated her. In her cross PW 3 deposed that about 6-7 years back, R was married to Samra Ghatowar. After 2 years of the conjugal life, R returned to her paternal home. Residence of Samra was within one kilometer from their house. After return to paternal home, for some month, Samra Ghatowar tried to take back R. She denied that Samra Ghatowar used to visit R for taking her back till prior to one week of filling of the case. She has no personal knowledge about the cohabitation between R and accused. She has never seen the accused in meeting R at any point of time. She came to know about the pregnancy only when R was pregnant by seven months. She denied that accused was no way responsible for the pregnancy of R.
- 11. PW-5 Sri Nabajyoti Gogoi in his evidence deposed that from the villagers, he came to know that victim R become pregnant for about 7 (seven) months. He has inquired from her. About 9-10 months back, R delivered one girl child. In his cross examination, he deposed that about 6-7 years back, R was married to Samra Ghatowar. After about 1-1½ years of conjugal life, she returned to her paternal home. She has heard that Samra Ghatowar used to visit R for taking her back prior to this incidence. He has no personal knowledge about the cohabitation between R and accused.
- 12. PW-6 Sri Ashim Bora in his evidence deposed that on 14.04.2015, he received one written FIR from victim R and registered Geleky PS case No. 54/15. Exbt. 2 is the FIR. During investigation, he went to the residence of informant and drawn a sketch map of the PO. Exbt. 3 is the said sketch map.

On the next day, victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. On 15.04.2015, he apprehended the FIR named accused Sri Sarat Koiri @ Anil Koiri and forwarded him to Court for remand. He has collected the medical report and the statement given by victim in Court. Exbt. 4 is the statement of the victim R. 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 6 deposed that he has visited the place of occurrence on the date of receipt of FIR at 5 PM. He admitted that he has not examined the scribe of the FIR as witness. In and around the residence of informant, several other persons have their residences. He has not recorded the statement of the brother of the victim who used to reside with the victim in same house. He has not examined Pankaj Gogoi and Nandalal Boraik and cannot say that they are neighbours of the residence of victim. He has not collected any other medical report regarding her test except report of Dr. S. Changmai. He has not collected any age proof document of the victim as she did not go to school and she has no birth certificate.

13. Point No. I: So far point No. I is concerned, from the materials on record, particularly from the evidence of P.W. 1, the M.O. it appears that as per dentist opinion her age was determined as below 17 years. In cross examination PW-1 admitted that without conducting X-Ray, proper age cannot be determined. PW-2, the victim 'R' while adducing her evidence claimed her age as 17 years. However in her cross examination she admitted that about 6-7 years back, she was married to one Samra Ghatowar and at the time of her marriage, she was aged about 14 to 15 years. PW-3 and 4, have corroborated the above facts regarding marriage of the victim with Samra Ghatowar and her age at the time of her marriage with the said Samra Ghatowar. PW-5 Sri Nabajyoti Gogoi stated the fact of marriage of the victim about 6-7 years back. From the above, if we calculate the age of the victim then her age appears to be 19 to 20 years at the time of alleged incident. Moreover, law is well settled that medical opinion may vary by two years on either side. Applying above, it can safely be held that at the time of incident, the victim was major in age.

- 14. <u>Points No. II:</u> So far the allegation of penetrative sexual assault, which may be termed as rape is concerned, in view of age of the victim, it appears that there was no dispute regarding pregnancy of the victim at the time of filing of the FIR. This fact was duly proved by the victim as well as the other witnesses and also the PW-1, Medical Officer. The fact of giving birth of one female child after filing of this case was also not in dispute and same was admitted by the accused in his 313 Cr.P.C examination. As the victim was pregnant at the time of filing of the FIR, so the fact of physical relationship (sexual intercourse) by some male member is apparent on the face of the record.
- 15. Now the prime question is whether accused has committed the said sexual intercourse with the victim against her will. In her FIR, the victim stated that by giving threat, accused committed rape on her against her will. The victim though in her evidence stated that accused came to her residence thrice and committed rape on her, but from the other part of the statement of the victim, it appears that on stopping her menstrual period only, she informed the matter to her aunt Rahila Bhuyan and her father came to know about the incident while she was pregnant for about eight months. From the evidence of victim as discussed above, it appears that she disclosed the matter of involvement of the accused in causing her pregnant only after eight months of her pregnancy which appears to be very unnatural. It is a matter of common knowledge that pregnancy of a woman appears to be visible after 3-4 months and in the case in hand, if we look at the evidence of PW-3, the father of the victim it reveals that he could detect the pregnancy of the victim after seven months and then only he asked Rahila Bhuyan to know the cause of pregnancy. Even Rahila also in her evidence stated that after seven months of the pregnancy, the victim informed her about her pregnancy and that too through the accused. Keeping mum for about 7-8 months, though as per the FIR the first incident of rape took place about a year back, the reliability of the evidence of the victim becomes doubtful.
- 16. If we look at the evidence from other angle, particularly from the Special (P) Case No. 11 of 2016 Page 7 of 9

cross examination of PW-2, the victim and her parents i.e. PW-3 and PW-4, it appears that prior to the incident victim was a married to Samra Ghatowarl and said fact was suppressed by them. There is evidence that Samra Ghatowar used to keep relation with the victim for persuading her to return to conjugal life.

- Apart from this, it is also admitted by the victim that accused worked as a labour Sardar in the Tea Garden where she worked as a labour. Though the victim denied having some quarrel with the accused due to her termination from the work of the Garden, but the facts narrated by the victim and her parents do not inspire any confidence on the testimony of PW-2 regarding allegation of rape by the accused. The evidence of the victim and her parents, particularly on the point of non-disclosure of fact of commission of rape by the accused for about seven months makes their evidence untrustworthiness and unsafe to hold the accused guilty.
- 18. Considering all above, I am of the opinion that prosecution has failed to prove the charge U/S 4 of POCSO Act, 2012 or any other minor offences against the accused Sarat Koiri @ Anil Koiri. As such, accused Sarat Koiri @ Anil Koiri is acquitted from the charges U/S 4 of POCSO Act, 2012 and set at liberty forthwith.
- 19. 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.
- 20. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 21. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 8th day of November 2017 at Sivasagar.

Special Judge, <u>Sivasagar</u>

APPENDIX

- 1. Prosecution witnesses -
 - P.W.1 Dr. Sundar Changmai (M.O.)
 - P.W.2 Victim R
 - P.W.3 Sri Daria Bhuyan
 - P.W.4 Smt. Rahila Bhuyan (Informant)
 - P.W.5 Sri Nabajyoti Gogoi
 - P.W.6 Sri Ashim Bora (I.O.)
- 2. <u>Defence witnesses</u>: Nil.
- 3. <u>Court witnesses</u>: Nil.
- 4. Exhibits by prosecution -
 - Exbt.1 Medical examination report.
 - Exbt.2 FIR
 - Exbt.3 Sketch map
 - Exbt.4 Statement of the victim U/S 164 Cr.P.C.
 - Exbt.5 Charge-Sheet.

Special Judge, Sivasagar