IN THE COURT OF THE SESSIONS JUDGE, CACHAR AT SILCHAR.

Present :- Sri K. Choudhury, Sessions Judge,

Cachar, Silchar.

Spl. (POCSO) Case No: 07/2015.

U/S. 8 of POCSO Act.

State of Assam......Complainant.

-Vs-

Bishal Tanti.

son of Sri Tanu Tanti.

village-Aynacherra

P.S. Udharbond. ::::::::: Accused person.

Charge framed on :- 14.08.2015.

Date of recording evidence :- 11-09.15, 27.11.15, 17-02-15, and

09.03.16.

Statement of the accused persons recorded on :- 09.03.16.

Argument heard on :- 14.03.2016.

Judgment delivered on :- 16-03-2016.

ADVOCATE APPEARED

For the prosecution :- Mr. S. Choudhury, learned Addl. P.P.

For the defence :- Mr. K. Kar. Learned advocate.

JUDGMENT

1. Prosecution case in brief is that on 27-05-15 at about 11.00 a.m. the accused entered into the house of the complainant and finding

the victim minor daughter of the complainant alone in the house committed rape on her. On her raising alarm, one girl namely, Mili Panikar seeing the occurrence when raised alarm the accused fled away. Accordingly ejahar was lodged which was registered as Udarbond P.S. case No. 129/05 U/S 448 IPC R.W. Sec. 4 of Prevention of Offence against children of sexual offences Act (POCSO) 2012.

- During investigation, victim was examined by doctor on the following day i.e. on 28-05-15. Her statement was also recorded U/S 164 of Cr.P.C. On completion of investigation I.O. submitted charge sheet against the accused person U/S 448 IPC R.W. Sec. 8 of POCSO Act, 2012.
- 3. On production of the accused, copies of all necessary police papers were furnished to him. After hearing of both sides and perusal of materials on record, this Court framed normal charge against the accused U/S 8 of POCSO Act. The charge was read over and explained to the accused to which he pleaded not guilty. Hence, trial began.
- 4. To prove the case, prosecution altogether examined as many as seven witnesses (P.Ws). Defence pleas are of total denial. The accused in his examination U/S 313 of Cr.P.C. also denied all the acquisition stating as false. However, no evidence is adduced in his defence.
- 5. Now, the most question for determination is whether under

the facts and circumstances of the case the accused committed sexual assault on the ten years aged alleged victim daughter of the complainant.

- 6. To decide the above appoint I have heard argument from both sides and perused the entire evidence on record. My findings and decisions with reasons thereof are given below.
- 7. P.W.1 who is the victim daughter of the complainant. Before recording her evidence she was examined for testing his capability of adducing evidence. On being satisfied about her ability to testify as witness, recorded her evidence in camara. According to her evidence, she used to call the accused as 'dada' (elderly brother). His house is near to her. On the date of occurrence while she was alone in the house and was engaged in cooking food accused entered to her house and asked for tobacco leaves. On her reply about non availability he left. After some time the accused returned to her house and pressed her body and breast. The accused also removed her clothes including under garment and committed rape on her. On query about rape she replied that the accused used force on her and roar on her on the ground. She further deposed that the accused while doing such act also removed his clothes including shirt and pent. When her mother, the informant of this case came at about 12.0 clock noon the matter was reported. P.W.1 also deposed that at the time of occurrence one girl namely, Subha Panikar saw the incident and also gave statement to the police accordingly. Seeing her accused fled away.

- 8. P.W.2 the mother of the victim, deposed that the date of occurrence she went out for work leaving her victim daughter aged about ten years in the house. The victim was asked to prepare food. At about 12.0 clock noon when the informant returned home the victim reported her that the accused at first sought for some tobacco and subsequently again came back and committed rape on the victim. The matter was reported to the father of the victim. He came about 2-3 days after incident from Bangaloroo. The informant reported the matter to police at about 5.00 p.m. Police took the victim for medical examination.
- 9. PW. 3 Sanju Tantubai deposed that at the material time he was working at Panchayat and on the date of alleged occurrence at about 12-30 p.m. the informant and her uncle came to him and informed that on that day at about 12.0 clock (noon) accused committed rape in their house. After that one ambulance was managed for taking the victim to hospital some money was also given for the purpose.
- 10. PW. 4 Sabir Tanti deposed that on the date of alleged occurrence at about 3.00 p.m. when he returned home the mother of the victim reported that victim was raped by the accused. She prayed for help. Then an ambulance was managed for taking the victim to hospital. Some money was also given to the informant.
- 11. PW. 5 Kamal Tanti also deposed accordingly as a reported witness.
- 12. PW. 6 S.I. Abdul Motin Talukdar who deposed that on 28-02-15 while he was posted at Kumbhirgram Security in-charge, O/C of

Udarbond P.S. entrusted him to investigate the case which was registered as Udarbond P.S. case No 129/15 U/S 448 IPC R.W. Sec. 4 of POCSO Act. Ext-1 is the FIR. During investigation he found both the victims and complainant at Udarbond P.S. he examined them and sent the victim for medical examination. Victim was also produced before the Magistrate. He further deposed that he also visited the P.O. Ext-2 is the sketch map of the P.O. Ext-3 is the statement of the victim recorded U/S 164 of Cr.P.C.On completion of investigation he submitted charge sheet.

13. PW. 7 — Dr. Orina Raha deposed that on 28-05-15 she examined the victim girl at S.M.C.H. in connection with this case. During examination the victim narrated the alleged incident as on 27-05-2015 at 11.00 a.m. the accused came to their house and forcibly removed her cloth and committed sexual intercourse with her. A girl named as Nile came there and seeing the incident when she screamed the accused left. It is further deposed that mother of the victim also narrated the same story. Vital findings are (i) hymen was found intact. (2) there was no bodily injury. (3)No stains in the wearing garment. (4) No spermatozoa etc were detected. Age of the victim was in between 9 to 12 years. No evidence of recent sexual inter course was detected.

In the cross-examination, M.O. deposed that the victim did not complaint about any pain.

14. During argument on the basis of the above evidence, learned Addl.P.P. has submitted that in the instance case except the victim others are reported witnesses and there is no reason to disbelieve the testimony of the minor girl ,the victim. It is further submitted that once it is established that the sexual assault has been committed burden

shifts to the accused under the POCSO Act to disprove that no such incident took place. On the contrary it is submitted by learned defence that the prosecution is to prove by cogent and convincing evidence that alleged occurrence took place but in the instant case there is no convincing evidence to suggest that alleged occurrence actually took place. According to the learned defence counsel the accused has been falsely implicated due to boundary dispute and strained relation between the parties which is apparent in the evidence on the record. Further it is submitted that non examination of one Mili Panikar whose name appeared in the ejahar as eye witness is fatal for the prosecution. While perusing the cross-examination of witnesses, it reveals that there had been dispute regarding boundary fencing since prior to the alleged incident and the dispute is still continuing. P.W.1 in her crossexamination stated that one Subha Panika saw the entire incident. Non examination of such an eye witness gives rise to some questions as to the veracity of the prosecution case. P.W.2 in her cross-examination stated that she lodged ejahar at about 9/10.00 a.m. whereas it reveals in the evidence of I.O. that the F.I.R. was lodged on the same date of the alleged incident i.e. on 27-05-15. If that be so, question comes as to how the ejahar could be lodged prior to the alleged incident. Question may come such a discrepancy may be due to short of memory. But in the instant case the informant adduced evidence about three and half months after the alleged incident. Therefore, such a discrepancy appears to be material discrepancy. P.W.2, the informant in his cross-examination stated that they are of Teli community whereas the accused is of Tanti community and the accused married her niece and after his marriage they cut of their relation with him (accused). Defence suggestion is that the accused is the victim of such strained relation. This probability under the facts and circumstances of this case cannot at all be overlooked. It is

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not convincing that a girl of ten years of age would be allowed to stay

home alone and would be asked to prepare food. Further, in the absence

of any injury on the person of victim during medical examination and

non-complain of any pain also tend to support the probability of false

implication. In view of the above, under the facts and circumstances of

the case, without any corroborative evidence it is very difficult to rely the

sole testimony of the victim.

15. In view of the above discussion of evidence, contention and

consideration of evidence on its entirety it is held that prosecution case is

not proved beyond all reasonable doubt. Hence, the accused is held to

be not guilty of the offence as charged of what so ever. Therefore, he is

acquitted from the charge and set at liberty forthwith.

16. Bail bond stands discharged.

Judgment is pronounced and delivered in the open Court

under my seal and signature on this 16th day of March, 2016.

(Shri K. Choudhury) Sessions Judge,

Cachar, Silchar.

Dictated & corrected by me.

(Shri K. Choudhury) Sessions Judge, Cachar, Silchar.

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APPENDIX

(A)	PROSECUTION WITNESSES: -
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- PW. 1 Babita Teli.
- PW. 2 Sabita Teli.
- PW. 3 Sanju Tantubai.
- PW. 4 Sabir Tanti.
- PW. 5 Kamal Tanti.
- PW. 6 S.I. Abdul Motin Talukdar.
- PW. 7 Dr. Orina Raha.
- (B) <u>DEFENCE WITNESSES</u>: NIL.
- (C) <u>COURT WITNESSES</u>: NIL.

(D) PROSECUTION EXHIBITS: -

- Ext. 1 F.I.R.
- Ext. 1 (1) Signature of the then O/C.
- Ext. 2 Sketch map.
- Ext. 2 (1) Signature of PW-6.
- Ext.3: Statement of P.W.1 recorded U/S 164 of Cr.P.C
- Ext. 4 Charge sheet.
- Ext. 4 (1) Signature of PW-6.
- Ext. 5 Medical report.
- Ext. 5 (1) & Ext-5(2) Signature of PW-7.
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: Nil.

(Shri K. Choudhuy), Sessions Judge, Cachar, Silchar.