Special (POCSO) Case No. 11/2017

(Under Section 6 of the POCSO Act)

State

-Versus-

Sumon Bhumiz

..... Accused.

PRESENT: Shri D. Bhattacharjee, AJS,

Special Judge, Hailakandi.

Particulars and Appearances:-

For the State

:- Shi U.K. Das, Ld. Public Prosecutor.

For the Accused

:- Shi R.A. Laskar, Ld. Legal Aid Counsel.

Dates of recording prosecution evidence:- 22.11.2017, 06.12.2017, 02.01.2018,

25.01.2018, 27.07.2018 & 09.08.2018.

Date of recording statement U/S 313 of Cr.P.C. :- 23.08.2018.

Date of Argument

:- 07.09.2018.

Date of Judgment

:- 20.09.2018.

JUDGMENT

The prosecution case is that the Hailakandi P.S. Case No. 536/2017 was registered under Section 4 of POCSO Act, 2012 on the basis of an FIR lodged by Sri Jitul Borah, District Child Protection Officer, Hailakandi, alleging that he received a complaint from one Santi Bhumiz regarding sexual assault on her 11 years old daughter by none else but by the father of the victim. The informant, mother of the victim submitted an application before Sri Jitul Borah, District Child Protection Officer, Hailakandi, alleging that her husband committed sexual assault on her daughter viz. the victim since one month before lodging the

Contd......P/2.

20 Jidge Sessions Kandi application. It is further alleged that on 22.08.2017 her husband returned home late night while she was asleep with her 4 kids – 3 daughters and 1 son and after a few minutes, her second daughter screamed for help and asked to lit light, after lightening the lamp, she found her daughter without cloths and her husband with his pant zip open. Her daughter screamed and said that her father was upon her body and put his private parts into her private parts. On seeing the same, she pushed her husband from bed and she had to fight with him. In the next morning, her daughter complained of bleeding and severe stomach pain, which suggested that her husband had attempted penetrative sexual assault. After 2/3 nights, her husband again attempted the same thing but her daughter could not raise any hue and cry as because she was tightly gagged her mouth but she alarmed by leg and when she (informant) woke up, she found the accused committing sexual intercourse with her daughter. Then she kicked him and as a result, he had beaten up her violently. It is further alleged that her husband also did the same thing with her another daughter.

- 2. On receipt of the FIR, police set the investigation in motion and visited the place of occurrence, prepared rough sketch map thereof, got the victim medically examined, got her statement recorded under Section 164 of Cr.P.C., recorded the statements of witnesses, arrested the accused person and forwarded him to the court and after completion of investigation submitted charge sheet against the accused person under Section 4/6 of the POCSO Act, 2012.
- 3. This Court being the Special Court under POCSO Act, in compliance with Section 207 of Cr.P.C. furnished copies of relevant materials to the accused person and after hearing the Ld. Public Prosecutor and the Ld. Defence counsel framed the formal charge against the accused under Section 6 of POCSO Act, 2012 and the charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

2 Ashradie

evident from the trend of cross examination. The accused person was examined under Section 313 of Cr.P.C., wherein he denied all such incriminating materials brought in evidence against him by the prosecution witnesses. The defence declined to adduce any evidence.

5. Heard argument of the Ld. Public Prosecutor and the Ld.
Defence counsel.

POINT FOR DETERMINATION

Whether the accused person, before 30.08.2017 at Sonbeel Road, Sirishpore Tea Garden, Hailakandi committed aggravated penetrative sexual assault upon his daughter i.e. the victim aged about 11 years and thereby committed an offence punishable under Section 6 of the POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

deposed that about 3/4 months back, in a mid-night she was sleeping with her 4 children on one bed and on another bed, her husband was sleeping. The victim is her second child. At that time, she heard cry of the victim, she woke up from sleep and saw her husband viz. the accused in naked condition and the frock of the victim was pulled upward and the accused was committing sexual intercourse. Then she assaulted the accused and somehow managed to push him away. The accused wanted to assault her and thereafter, the accused went out. Her daughter viz. the victim reported her that the accused earlier also committed such type of acts with her. Thereafter, on the next day, she came to Hailakandi town and informed the same to the concerned office and lodged the complaint.

Pessions Judge

about the incident but they did not come to her house. The accused is a habitual drunker and always remains under influence of liquor and having drunk, he starts quarrel with them. On hearing cry of her daughter, her other children also woke up. She has further stated that she saw the accused in naked condition and was committing sexual intercourse with her daughter. She has further stated that the accused does not contribute anything in maintaining livelihood of her family.

- 7. The PW-2, Sri Jitul Borah, the District Child Protection Officer, Hailakandi, has deposed that on 30.08.2017 the informant along with her daughter viz. the victim came to his office and submitted written complaint to the effect that the victim, a minor child was sexually assaulted by her father. Thereafter, he forwarded the complaint to the Officer-in-charge, Hailakandi Police Station.
- Such, oath was not administered to her, however, finding her sufficient maturity of understanding, her evidence was recorded. She has deposed that about 4 months back, in one night, she was sleeping near her mother and at that time, her father came to her, removed her cloths and slept on her. He also did some bad acts with her. There was bleeding from her vagina. Her mother woke up from sleep and kicked her father. Thereafter, her mother lodged the case. She was taken to the hospital and also to the court.

In cross examination, she has stated that her mother and father have been always quarrelled each other. Her mother maintains the livelihood of her family. On the relevant night, as she was sleeping, she cannot say when her father entered into her room. After the incident, she and her mother reported the incident to their neighbouring people. Her mother did not tutor her when she was taken to the court for recording her statement. Her neighbours Ratan Kurmi, Majela and others came to her house on the relevant night itself on hearing their halla and her mother narrated the entire incident to them.



9. The PW-4, Smt. Saraswati Goswami, a Social Worker, District Child Protection Unit, Hailakandi, has deposed that on 30.08.2017 the informant came to their office and reported that the victim aged about 10/11 years was raped by her father and accordingly, Rajashree Roy Deb, a Member of POCSO Committee prepared FIR in her presence vide Ext.-1 and Sri Jitul Borah, District Child Protection Officer, Hailakandi, forwarded the same to the Officer-incharge, Hailakandi Police Station, who further entrusted her to conduct social investigation over the matter and accordingly, she visited the residence of informant.

In cross examination, she has stated that she enquired about the matter. The family of informant is very poor and the informant with great hardship maintains livelihood of the family.

The PW-5, Women Police Constable, Smt. Krishna Moni Dutta has deposed that on 08.03.2017 she along with DSP, Smt. Rajashree Dhandia went to the house of one Smt. Rajashree Roy Deb, a Member of POCSO Committee, where they found the victim girl and her mother. The victim girl and her mother told them that the accused, who is the father of the victim, committed rape on the victim in drunken condition. She has further stated that the victim is a minor girl. They took the victim to the Civil Hospital Hailakandi but she was referred to SMCH, Silchar for examination. On the next day, after medical examination, she handed over the victim to her mother.

In cross examination, she denied that she did not stated before I.O. that the victim and her mother told her that the father of the victim committed on the victim in drunken condition.

The PW-6, Smt. Rajashree Roy had deposed that on 30.08.2017 she was holding the post of Member, POCSO Committee and on that day, at around 3 P.M. the informant came to her house and narrated the entire incident as to how the victim was sexually assaulted by her father and they sought for help. She has further stated that the victim was aged about 10 years.

Contd......P/6.



Thereafter, she drafted a complaint vide Ext.-1 addressing the District Child Protection Officer, Hailakandi.

In cross examination, she has stated that when the victim and informant reported the incident to her, there were other persons present and amongst them, one Translator of POCSO Committee namely Smt. Saraswati Goswami, Sri Jitul Borah District Child Protection Officer, Hailakandi and Sri Guljar Ahmed, Non-institutional Protection Officer. She has further stated that the informant came to their office directly without support of any NGO. The informant did not produce any document to her in respect of the age of the victim. She took thumb impression of the informant in the complaint. She asked the victim before writing the complaint about the incident.

- 12. The PW-7, Sri Milu Kalindi has deposed that he does not know anything about the incident.
- The PW-8, Dr. Orina Raha of Forensic Medicine, SMCH, Silchar, has deposed that on 01.09.2017 she examined the victim at SMCH, Silchar in connection with Hailakandi P.S. Case No. 536/2017 and found old tear 9'O clock position in hymen. Vagina was found healthy and no spermatozoa was found. In her opinion, the victim was aged above 10 years and below 12 years, sings of recent sexual penetration not detected, the vaginal smear does not show spermatozoa, however, evidence of sexual penetration found present in her person and no injury on her body was detected. Ext-3 is the report.

In cross examination, she has stated that as per version of the victim, 10 days before the medical examination, the last incident was occurred. On the basis of dental and radiological test, she arrived at the finding as regards age of the victim.



rough sketch map thereof vide Ext.-6. On the next day, she again visited the place of occurrence, recorded the statements of witnesses and on being found the accused in his house, apprehended him. Thereafter, she got the information that the victim and her mother had been in the house of one Rajashree Roy where her mother was working as a maid. She went there and recorded the statements of victim, informant and Rajashree Roy. Thereafter, she forwarded the victim to Civil Hospital Hailakandi but due to examination of vaginal swab, the victim was referred to SMCH, Silchar. She got the statement of victim recorded under Section 164 of Cr.P.C. After completion of investigation, she submitted charge sheet against the accused person Sumon Bhumiz.

In cross examination, she has stated that there is no note in the case diary regarding the delay in filing the complaint. The PW-5, Krishna Moni Dutta did not state before her that the victim and her mother told her that the victim was raped by her father in drunken condition.

- From the evidence of PW-9, Investigating Officer, it is revealed that the mother of the victim girl was working in the house of PW-6 who is a Member of POCSO Committee, Hailakadi, as a maid. In that connection, immediate after the occurrence, the mother of the victim viz. the PW-1/complainant informed the same to the PW-6 and she drafted the Ext.-1, complaint and asked the complainant to lodge the same to the PW-2, the District Child Protection Officer, Hailakandi, who in turn forwarded the complaint to the Officer-in-charge, Hailakandi Police Station vide Ext.-2, FIR.
- 16. The evidence of PW-1 disclosed that the accused is her husband and out of their wed-lock, they got 5 children. The eldest daughter was aged about 17 years at the relevant time and she was also victimised in the hands of accused and as such, at present, the eldest daughter has been residing at Karimganj.
- The PW-1 has testified that on the relevant night, she was sleeping with her 4 children including the victim on one bed and her husband *Contd......P/8.*



was also sleeping on another bed and in the mid-night, she heard scream of her second daughter viz. the victim. She woke up and found her husband in naked condition and was committing sexual intercourse with her daughter. Then she managed to push the accused away who was under influence of liquor. Thereafter, her daughter reported her that the accused also did such type of bad acts with her earlier. The PW-1 is an eye witness to the occurrence and during cross examination, the defence could not impeach her testimony. Now, coming to the evidence of victim/PW-3, it is found that the victim has stated that on the relevant night, while she was sleeping near her mother, her father came to her, disrobed her and did some bad things with her, there was bleeding from her vagina, her mother woke up from sleep and kicked her father. The PW-3 has further testified that the accused did such type of bad acts with her even before the incident. The evidence of victim could not be demolished by defence, even could not bring out any contradiction. The evidence of PW-1 and PW-3 are very much consistent and corroborative to the fact that the accused committed penetrative sexual assault on the victim.

- During investigation, at the earliest possible opportunity, the statement of victim was recorded under Section 164 of Cr.P.C. and she has very categorically stated that at one night, while she was sleeping, the accused put off her pant and started touching her, to which she felt hurt and on being raised hue and cry, her mother saved her. She has further stated that after some days again while she was sleeping, the accused forced him on her and pressed her hands and mouth and did bad things. She clarified that her father viz. the accused tried to put something on her private parts and on raising alarm, her mother woke up and saw the accused doing the bad things with her. Though the victim is a child witness but she narrated the entire incident in a decent manner as to how she was exploited by her father.
- 19. There is no contradiction in the testimony of the victim and her mother with their statements made at the earliest possible opportunity, even the defence could shake credit of their testimony.



Contd......P/9.

- The PW-4 a social worker, PW-5 Women Police Constable and PW-6 a Member of POCSO Committee, Hailakandi, very categorically deposed that the victim and her mother reported them that the accused committed sexual assault on the victim.
- 21. The victim is the daughter and the informant is the wife of the accused and from the cogent evidence as discussed above, adduced by both of them as well as other witnesses, I do not find any reason whatsoever to disbelieve their evidence.
- The PW-8, Dr. Orina Raha, who examined the victim at 22. SMCH, Silchar, has found the hymen with old tear 9'O clock position, no spermatozoa was found and no signs of recent sexual intercourse detected but it is opined that the evidence of sexual penetration was found present in the person of the victim. The victim in her evidence has stated that even before the present incident, the accused did bad things with her. The victim and her mother are rustic village people having no education and thus, it is very natural that they cannot say the exact date of occurrence but immediate after the occurrence when the informant reported the same to the PW-6, the Ext.-1, complaint was drafted by the PW-6. In the complaint, the last date of occurrence is mentioned as 26.08.2017. The victim was medically examined on 01.09.2017 which shows that after 6 days of the occurrence, the victim was medically examined and therefore, it is difficult for the attending doctor to find out evidence of recent sexual intercourse. However, the doctor has opined that there was evidence of sexual penetration, which receives support from the evidence of PWs.-1 & 3 that the accused committed penetrative sexual assault on the victim viz. the PW-3.
- As regards age of the victim, the PW-1 has stated that at the relevant time, the victim was minor. The victim/PW-3 has stated that at the relevant time she was 10 years old. The evidence of PW-8, Medical Officer is that the radiological age of the victim is 10 to 12 years. Therefore, it is arrived that the victim was a minor girl at the relevant point of time.

2 Sons Judge

Contd......P/10.

- the evidence of PW-1 and PW-3, it appears that there was frequent quarrel between the PW-1 and the accused and the accused having drunk even used to assault the PW-1 and therefore, it is clear that the PW-1, wife of the accused created the entire story and filed the case with false allegations against the accused only to harass him. The above submission of the Ld. Counsel is not at all confidence inspiring as the evidence as discussed above is very much clear and cogent that it is accused and none else has committed the incident. Had the informant intended to file false case against the accused, she could have alleged any other things but here in the instant case, the allegation is made in respect of the chastity of her own minor daughter and that too in the hands of father.
- 25. In view of above, it is held that the prosecution is able to prove its case successfully against the accused person, who is the father of the victim, beyond all reasonable doubt.
- 26. Accordingly, the accused person Sumon Bhumiz is convicted under Section 6 of POCSO Act, 2012.
- 27. Heard the convict on the point of sentence, he has pleaded for clemency. His statement has been recorded in a separate sheet and appended to the record.
- 28. Considering all aspects, the convict Sumon Bhumiz is sentenced to rigorous imprisonment for 14 (fourteen) years and to pay fine of Rs. 5,000/-, in default, further rigorous imprisonment for 2 (two) months under Section 6 of POCSO Act, 2012.

Jos don Judge

Special (POCSO) Case No. 11/2017

-11-

Rs.1,00,000/- should be deposited for 3 (three) years in term deposit scheme in any Nationalised Bank in the name of victim and the bank shall not grant any loan or advance or any premature withdrawal on the said amount without prior permission of this Court.

- **30.** The convict was informed about his legal right to appeal.
- **31.** Furnish 3 (three) copies of this judgment to the convict immediately free of cost for convict himself, for Superintendent of Jail and for relative of the convict.
- Also, send a copy of this judgment to the District Magistrate, Hailakandi and the Secretary, District Legal Services Authority, Hailakandi.
- The Special (POCSO) case is disposed of accordingly.

Given under my hand and seal of this Court on this the $20^{\rm th}$ day of September, 2018 at Hailakandi.

Special Judge 6

Dictated and corrected by me:

Special Judge, Hailakandi.

Dictation is taken and transcribed by Samsher Bahadur, Stenographer

Grade – III.

Contd......P/12.

Appendix :-

Oral Evidences:-

PW-1, Smt. Shanti Bhumiz.

PW-2, Sri Jitul Borah.

PW-3, Kajal Bhumiz.

PW-4, Smt. Saraswati Goswami.

PW-5, WPC/384 Smt. Krishnamoni Dutta

PW-6, Smt. Rajashree Roy.

PW-7, Sri Milu Kalindi.

PW-8, Dr. Orina Raha.

PW-9, Smt. Rajashree Dhandia

Documentary Evidences:-

Ext.-1, Complaint petition.

Ext.-2, Forwarding cum FIR.

Ext.-3, Medical report.

Ext.-4, X-ray report.

Ext.-5, FIR Form.

Ext.-6, Rough sketch map of the place of occurrence.

Ext.-7, Charge sheet

Defence did not adduce any evidence.

Signal and i

IN THE COURT OF THE SESSIONS JUDGE:::::HAILAKANDI Certificate as per Report dated 16.04.2018 of NALSA in case of trial through Legal Aid.

Annexed to the Judgment dated 20.09.2018 passed in Special (POCSO) Case No. 11 of 2017 u/s 6 of POCSO Act, 2012.

It is hereby certified that convict has been informed and explained the judgment in vernacular and it is made sure that he has understood the same. It is further certified that convict has been explained that he has a right to appeal before the court of Hon'ble High Court within a period of 30 days.

The convict is also informed that he is eligible and entitled to free legal aid by virtue of being in custody. Free and Competent legal services are availbale from DLSA/SLSA/HCLSC in the court as well as inside the jail.

Convict has been supplied three sets of attested copies of judgment and order of sentence along with warrant to be used as under:-

- (i) One copy for the family of the convict.
- (ii) One copy for the official jail records to be enclosed with the custody warrant.
- (iii) One copy for the convict who shall be allowed to retain it at all times with himself/herself.

Sessions Budge