

Spl (POCSO) Case Number 14 of 2014

U/S 6(j) (ii) of POCSO Act

Present:-Shri K. Choudhury, LL.M.,

Sessions Judge,

Cachar, Silchar.

State of AssamComplainant.

-Versus-

Counsel Appeared:

Advocate for the prosecution...... SriS.Choudhury ld. Addl.P.P.,

Advocate for the accused: - Sri.P.Dey,ld State defence counsel

J<u>UDGMENT</u>

1. Prosecution case in brief is that the victim girl of this

case, the 12 years aged daughter of complainant Babul Kalindi while about after 2 years of working as maid under the accused she coming out from the house of the accused informed the complainant that on one day at about 10 am accused forcibly committed sexual intercourse with her. After that the complainant placed the matter before the 'Bagan Panchayat' for 'bichar' and the 'Panchyat' assured to hold a 'bihar' but in the meantime five months had been elapsed without any result and as a result of the illicit act of the accused her pregnancy developed. Accordingly FIR was lodged. The same was registered as Udharbond P.S. case bearing number 135/14 u/s 4 of POCSO Act 2012. During investigation the victim was medically examined. Her statement was also recorded u/s 164 of Cr.P.C. where she stated that the accused in the absence of her parents at one evening at about 5 p.m. coming to her house did bad work with her and resisted her from raising any alarm with a threatening that in case of disclosure to her parents she would be killed. Doctor opined her age as above 12 and below 14 years, and she was pregnant for around 25 weeks.

2. On completion of investigation I/O submitted charge sheet against the accused u/s 6 of POCSO Act 2012. The ld. J.M.1st Class,

Cachar on production of the accused and furnishing copies of all the necessary police papers committed the offence. My learned predecessor in office after hearing both sides and perusal of the materials on the record framed formal charge against the accused u/s 6 of POCSO Act 2012. The charge was read over and explained to which the accused pleaded not guilty. Hence, trial began.

3. To prove the case the prosecution examined as many as nine witnesses including the M.O. & I.O. The defence main plea is that at the material time the victim was of consenting age. However the defence by way of putting suggestions denied the allegation of sexual intercourse and causeing of pregnancy by the accused. However during examination of the accused u/s. 313 Cr.P.C. he stated that he caused

the pregnancy and in the 'bichar' he agreed with the proposal to marry the victim. He further stated that at the material time the victim used to remain in his house as maid. He borne all the expenditure of the treatment of the victim and the same was released from his official fund. He further stated that this matter has been amicably settled, and as his wife already expired he remains in the house alone. He however declined to adduce any evidence. It is to be mentioned here that on 12/12/14 after the recording of evidence the complainant filed petition stating about the compromise of the case but no order was passed as it was submitted at late court hours.

4. **Point for determination is :**

Whether the accused committed the offence of aggravated penetrative sexual assault upon the victim resulting her pregnancy?

- 5. To decide the above point I have heard the ld. counsel of both sides. Perused the evidence on the record. My findings and decisions are given below.
- 6. PW.6 is the M.O. According to him on 31/7/14 while he was working as GDMO in the SMCH in the FSM Department on police requisition he examined the victim. During examination it was narrated by the victim that accused forcibly had sexual intercourse on several times during day time while she remained alone in the house. The main findings of the MO is that the victim was pregnant of around 25 weeks and her age was above 12 years and below 14 years. Ext.1 is his medical report. Ext 1(1) and 1(2) are his signatures and Ext.1(3) is his endorsement of the RTI of the victim. Ext.1(4) is the signature of Dr.Gunojit Das. Ext.2 is the police requisition. Ext 2(1) is his signature. Ext.3 is the command certificate. Ext.3(1) is his signature.
- 7. PW.1 is the victim and PW.2 is the complainant. The victim implicated the accused deposing that accused committed sexual intercourse with her forcibly on three occasions and as a result she became pregnant, and gave birth of a baby. The evidence of PW.2 is

that the victim used to go to the house of the accused for household work. The accused used to reside alone in the house. Knowing about the pregnancy on query the victim stated that the accused caused her pregnancy. On this matter a 'bichar' was held in their tea garden where the accused refused to marry the victim. Thereafter he lodged the ejhar. At that time the victim was aged about 12 years.

- 8. The evidence of PW.3 is that the wife of the accused expired and the victim used to work in the house of the accused and 'bichar' was held in the garden relating to the pregnancy of the victim. He came to know that the accused refused to marry the victim. PW.4 also adduced similar evidence supporting the evidence of PW.1 and PW.2. PW.5 deposed that he attended the 'bicha'r where the victim was also present. The victim disclosed that accused caused her pregnancy. The matter was not resolved in the 'bichar' as the accused refused to accept her as his wife and therefore the complainant lodged the 'ejhar'.
- 9. PW.8 and 9 also adduced almost similar evidence. According to the PW. 8 and 9 in the 'bichar' the accused admitted that he committed sexual intercourse with the victim resulting her pregnancy. According to PW.8 the victim stated in the 'bichar' that she had love affairs with the accused. In the cross examination he stated that in the 'bichar' the accused agreed to take the victim but father of the victim declined to hand over her on the ground of her illness. It is evident that the victim gave birth of a female child.
- 10. From the entire evidence it reveals that at first the accused during recording of evidence denied the allegation of sexual intercourse and causing of pregnancy by him. But at the later stage of the trial the defence brought from the mouth of PW.8 and PW.9 in their cross examination. that in the 'bichar' the accused expressed his willingness to take the victim to his cohabitation as his wife. He however denied the age of the victim as deposed by the father of the victim. It has also been brought in the cross examination of PW.9 that

the victim also agreed to go with the accused to which the complainant also agreed. According to the accused age of the victim was around 18 / 20 years at the time of alleged occurrence. But he has failed to establish the same by way of bringing any cogent materials. According to the doctor, the PW.6, age of the victim was found as above 12 years and below 14 years at the time of examination i,e, around after 25 weeks of the alleged incident. I find no reasons to disbelieve the testimony of PW.6 who deposed to have arrived at the findings on the basis of physical including dental and also radiological investigation.

- 11. From the evidence of the PW 1 and PW 2 it clearly appears that the complainant awaited for about five months to lodge the 'ejhar' on the hope of amicable settlement of the matter and being so failed he had to file the ejhar. It further appears that the intention of the complainant and also of the victim was that the accused would accept the proposal of marriage made in the 'bichar'. The accused, however, in the 313 Cr.P.C. statement as already been stated earlier that he is ready to accept the victim as his wife. There is no doubt about the age of the victim at the material time as below 14 years. Therefore the consent of the victim is very immaterial to bring home the offence guilty u/s 6 of the POCSO Act.
- 12. In view of the above discussions, contentions and consideration of the evidence in its entirety it is held that the prosecution has been able to prove its case beyond all reasonable doubts u/s 6 of the POCSO Act.12. So, accused is held guilty and convicted accordingly. Heard the accused on the question of sentence.
- 13. During hearing it is stated that he has none in his family except one married son living separately. He is a tea garden labourer and used to be engaged in leave plucking. He has further stated that he was/is always ready to take the victim girl to his cohabitation as his wife and will maintain both her and her newly born baby daughter. Therefore he has prayed for leniency.

14. It is evident that both the family of the victim and that of the accused belonged to a tea garden community leading their lives on wages. It is further evident that at the material time of the alleged occurrence the accused had been living alone as his wife had already expired and his married son has been residing separately. Further, as I have already alluded earlier that the complainant instead of lodging 'ejhar' waited for about five months with the hope of amicable settlement and also with that the accused would marry the victim. However, the accused, according to PW.1 and PW.2, at the first instance declined to take the victim (PW.1.). Moreover, it is seen that the complainant once filed a compromise petition. Nothing is brought in the record about previous conviction of the accused, if any, and also

nothing adverse is brought about his character except the occurrence of this case.

- 15. Having due regard to all aspects including the facts and circumstances of this case and the character of the offender(accused) and also the future of the baby daughter of the victim, I am of the view that instead of sentencing the accused instantly to any punishment it is expedient to release the accused on probation of good conduct with a direction that he shall enter into a bond to the effect that he would appear and receive sentence when called upon on any date within the period of three years, and in the meantime he shall keep peace and maintain good behavior. Accordingly sentence is kept in abeyance and the accused is directed to execute a bond for a period of three years.
- 16. The accused is, however, directed to pay an amount of Rs.10,000/- (ten thousand) as compensation for loss and injury caused to the victim due to the commission of the offence. The amount so

awarded as compensation is only awarded considering the economic status of the accused which is not at all an adequate one. Therefore in addition to that for rehabilitation of the victim and her baby daughter, it is strongly recommended that the victim shall be paid further compensation to be decided by the District Legal Service Authority.

- 17. Copy of this judgment be sent to the District Legal Service Authority for assessment of adequate compensation.
- 18. Copy of this judgment be furnished to the accused as per provision of section 363 Cr.P.C. and a copy also be forwarded to the District sMagistrate as per provision of Section 365 Cr.P.C

Judgment is pronounced and delivered in the open court under my seal and signature on this 30th *day of April 2015*.

Dictated and corrected by

S

(K. Choudhury)

Sessions Judge, Cachar Sessions Judge,

Cachar, Silchar

Transcribed by K. Bhattacharjee, Stenographer

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR

Spl POCSO CaseNo. 14 of 2014

APPENDIX

(A) PROSECUTION WITNESSES: -

PW 1 –Smti. Lakhi Kalindi.

PW 2 – Sri Babul Kalindi.

PW 3 – Sri Pradip Tanti.

PW 4 – Sri Situ Kalindi.

PW 5 – Sri Ajoy Kalindi.

PW.6-Dr.Orina Raha.

PW.7-Amarendra Nath Laskar.

PW.8 – Kalicharan Nayek

PW.9- Sunil Chasa.

(B) <u>DEFENCE WITNESSES</u>: - NIL.

(C) <u>COURT WITNESSES</u>: - NIL.

(D) PROSECUTION EXHIBITS: -

Ext. 1 – Medical Report,

Ext. 1(1)&1(2) – Signature of PW.6,

Ext.1(3)- Endorsement of RTI of victim,

Ext.1(4)- Signature of Dr. G. Das,

Ext. 2 – Police ,requisition,

Ext. 2(1) – Signature of PW.6,

Ext.2(2)- Signature of ASI B.Nath,

Ext. 3 – Command certificate,

Ext. 3(1) – Signature of PW.6,

Ext. 4 – FIR.

Ext. 4(1) – Signature of O/c Udharbond PS

Ext. 5 – Sketch map,

Ext. 5(1) – Signature of PW.7

Ext.6 - Statement of victim

Ext.7- Charge sheet

Ext.7(1)- Signature of PW.7

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) **COURT EXHIBITS**: - Nil

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

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