IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge,

Dhemaji,

JUDGMENT IN SPECIAL (POCSO)CASE NO. 04(DH)2014.

(G.R. Case No.987/2016(GRMK); Gerukamukh PS Case No.12/2016 u/s 376 IPC R/W Sec. 4 of the POCSO Act)

Committing Magistrate: Shri U Borah,

Judicial Magistrate,1st Class,

Dhemaji.

The State of Assam

- Versus -

Shri Juram Saikia

.....Accused Person

S/O Lt. Naram Saikia,

Vill. Dharmapur,

P.S. Gerukamukh,

Dist. Dhemaji (Assam)

Appearance:

Shri Ajoy Fogla,

Public Prosecutor

.....For the State

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Smti Beauty Phukan, Advocate,

Defence CounselFor the Accused person

Date of prosecution evidence : 10-04-2017, 08-05-2017,

29-08-2017,

Date of defence evidence : Nil

Date of arguments : 23-02-2018

Date of Judgment : 07-03-2018

JUDGMENT

- 1. The prosecution case in brief is that on 09-11-2016, the complainant Dijen Deka lodged an ejahar with Gerukamukh P/S alleging inter-alia that on the same date i.e. 09-11-2016 at about 8:30AM while his minor daughter Smti. X (victim) aged about 11 years was alone at home the accused Shri Juram Saikia came to their house and committed rape on his daughter lying on the ground. Hence the case.
- 2. On received of the ejahar police registered a case vide Gerukamukh PS Case No. 12/2016 u/s 376 of IPC read with Section 4 of the Protection of Children from Sexuality Offences Act, 2012 (POCSO Act). Police started investigation and on completion of investigation submitted charge

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sheet against the accused Juram Saikia to stand trial under the said sections of law.

- 3. The case came up before Judicial Magistrate 1st Class Dhemaji and the Ld. Magistrate issued process for appearance of the accused and on appearance furnished necessary copies to the accused and committed the case to this court.
- 4. On receipt of the case record and on production of the accused this court considered the materials on record and upon hearing both the sides, framed charges u/s 4 of the POCSO Act read with section 448 of IPC and read over and explained to him to which he pleaded not guilty. Prosecution, in order to prove its case, examined 6 witnesses. At the closure of the prosecution witnesses the accused was examined u/s 313 of Cr. P.C. The defence plea is of total denial. Defence adduced no evidence.

5. The Points for determination:-

- (i) That you, on 09/11/2016 at about 8:30 AM at village Dharmapur under Gerukamukh Police Station committed penetrative sexual assault upon Smti. X (victim) is a minor of about 12 years and thereby committed an offence punishable u/s 4 of the POCSO Act, 2012.
- (ii) That you at the same date, time and place committed house trespass into the house of victim for causing the offence u/s 4 of the POCSO Act and thereby committed an offence punishable u/s 448 of IPC.
- 6. I have gone through the evidence on record and heard arguments of both sides.

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Discussion, Decision and Reasons thereof

- 7. In this case prosecution examined 6 (six) witnesses including the minor victim. Prosecution examined the minor victim aged about 11 years as PW1. Before recording her statement, necessary questions were out to the victim and the Court being satisfied that she is capable to understand and gave rational answer without oath. The victim stated that the accused-Juram Saikia is known to her and he is from her village. On the date of occurrence at about 8 A.M. in the morning she was in her house getting ready to go to school. Her father had already gone out for work. Her mother expired before the occurrence. She also stated that accused-Juram Saikia whom she addressed as 'Kaka' came to her house and asked for a knife. Then she went inside the house to get the knife. But the accused also came inside and gagged her mouth and threw her on the floor and removed her panty/undergarment and touched her private part/organ with his penis. Then he went away. She further stated that after the incident, she went to school and when she returned home she wanted to tell her father about the incident but, he was not at home and in the evening her father came home and she told about the incident. Her father called a meeting. In the meeting the accused admitted he had done bad act with her. Then he was handed-over to police. Police got her medically examined and her statement got recorded u/s 164 of Cr.P.C. by Magistrate. In cross-examination, she stated that she made her statement as taught by her father. However, she also stated that accused-Juram Saikia did bad act with her.
- 8. PW2 is Shri Dijen Deka, father of the victim. His evidence is that on the date of occurrence at about 8 AM he had gone out for work and his daughter was alone in the house and getting ready for school. He returned home at 5 PM and she (victim) told him that the accused had come to her house and wanted a knife and when she went inside the house the accused

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grabbed her and touched his penis to her private part. He called VDP personnel - Chandra Borah, Bolin Borah and Dadu. A meeting was called and the villagers were present in the meeting. However, he could not take part in the discussion. He stated that the villagers took them to the police station and he filed the case. In cross-examination he denied the defence suggestion that he did not state before police that the accused did bad act with his daughter. He also denied the defence suggestion that he has falsely filed this case.

- 9. PW3 Sabita Das deposed that the victim told her in presence of the villagers that the accused came to her house and grabbed her and touched her private part with his penis. In cross PW3 stated that she did not see the occurrence. PW4 gave similar evidence as PW3.
- 10. PW6 is the Investigating Officer. His evidence is that on 9-11-2016 he was O/C of Gerukamukh Police Station. On that day he received an ejahar from one Dijen Deka to the effect that the accused-Juram Saikia committed rape on his daughter. Accordingly, he registered a case and took-up investigation. The accused was brought to the Police Station by the villagers and after arrest he was forwarded to custody. The victim was medically examined and she was produced before the Magistrate for recording her statement. He also drew sketch map of the P.O.
- 11. PW5 is the Medical Officer who examined the victim on 9-11-2013. After examination he opined that the age of the girl is below 12 years and there was no sign of forceful sexual intercourse. He did not find any injury on the private part/vagina of the victim.
- 12. From the discussion of evidence on record, it appears that the victim in her evidence categorically stated that the accused came to her house and grabbed her and abused/assaulted her sexually by touching her

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private part with his penis. He also stated that the accused did bad act with her.

- It is also in the evidence of the victim that she told her father about the incident and her father called a meeting in the village and in the meeting the accused admitted that he did bad act with the victim. However, in the cross-examination the victim stated that she made statement as taught to her by her father.
- Before I give my findings I may look at section 4 of POCSO Act which reads as under: 'Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine'.
- 15. I have carefully considered the evidence brought on record by the prosecution side. So far as the evidence of vital witnesses, the victim/minor in her cross-examination part is concerned, it is found that their statement in cross-examination part weaken, gets shaken by their own statement as far as the alleged sexual assault on the victim is concerned. The ocular evidence/testimony has not found corroboration from medical evidence. The evidence of independent witnesses appears to be hear-say and they have stated that they heard about the incident from the victim. I have given my anxious material in the circumstances and the evidence brought on record by the prosecution.
- It is well settled that conviction can be based on sole testimony of the victim and no corroboration is required from any quarter. But the fact remains that the evidence of the victim does not inspire confidence in-asmuch-as her statement in the cross-examination part militates against her statement in examination-in-chief. I am conscious of the fact that this is a

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case of sexual assault involving a minor girl but, in absence of credible evidence on record, I find it difficult to come to the conclusion that the prosecution has been able to prove the case to the hilt.

17. In view of what has been discussed above, I find that the prosecution has failed to prove the charge u/s 4 of POCSO Act read with sec. 448 of IPC beyond all reasonable doubt.

ORDER:

- 18. In the result, I find the accused Juram Saikia not guilty and accordingly, he is acquitted of the charges u/s 448 IPC and sec. 4 of POCSO Act. Set him at liberty forthwith.
- 19. Judgment is pronounced in open Court.
- 20. Given under my hand and seal of this Court on this the 7th day of March/2018. (S. Das)

sSpecial Judge,