# IN THE COURT OF SPECIAL JUDGE NAGAON. Present- A. Rahman, LL.M, AJS

## **Special (POCSO ) case No- 93(N) / 2018**.

U/S- 6 of the POCSO Act.

Parties -

-----State -----

-Vs-

Raja Rabi Das

R.K. Road , Metor-patty

PS- Nagaon.

Charge framed on - 14-12-2018.

Evidence recorded on -2-3 -19,4-4-19, 13-5-19,15-5-

19

29-5-19, 27-8-19

Argument heard on - 17-09-2019

Judgment delivered on - 23-09-2019

Appearance -

For the prosecution- Mr. M.J. Neog , learned special prosecutor.

For the defence - Mr.G.B. Goswami, learned Advocate.

# JUDGMENT

The instant Special case was registered after police had submitted charge sheet in Nagaon PS case No- 2628/18 U/S-4 of the POCSO Act.

The case depicts a very shameful and sadistic story how a minor girl aged around eight years was sexually violated by her own paternal uncle.

The case unfolded in the FIR dated 7-8-2018 lodged by Smt.Sita (actual name withheld) is that on 4-8-2018, at about 2PM, taking advantage of absence of her husband and herself, accused, her brother in -law (husband's own younger brother) lured her victim daughter Miss –X (name withheld to the house of Bhola Robi Das. None of the family member of Bhola Robi Das was present. The accused severally committed sexual intercourse with her minor daughter. After committing the heinous crime, he threatened her with dire consequence if she discloses the occurrence to at her house. The victim daughter of the informant on 4-8-2018, at about 5-30 am disclosed that her private part was bleeding as her uncle, the accused had committed bad-work with her.

She also found inner garment (panty) of her daughter was stained with blood.

On receipt of the FIR , the Officer in Charge of Nagaon Police Station registered the aforementioned case and entrusted Smt Prunima Buragohain (PW-7) to investigate the case. During investigation, the victim child was sent to Nagaon B.P. Hospital for her medical examination and treatment and she was produced before the Magistrate for recording her statement. The IO also visited the place of occurrence and recorded the statement of the material witnesses. The accused was also arrested and forwarded to the court with a prayer for sending him to jail custody.

At the conclusion of the investigation, PW-7 collected the medical examination report of the victim child and submitted charge sheet against the accused U/S-4 of the POCSO Act.

The accused detained in jail as UTP submitted before this court that he has no means to engage an advocate for his defence. Accordingly, considering his oral prayer, Mr. G.B. Goswami, empanelled as legal aid counsel of DLSA, Nagaon was appointed for the defending the accused during trial.

After hearing both sides and considering the materials on record, charge U/S-6 of the POCSO Act was framed read over and explained to the accused person to which he has pleaded not guilty and claimed to be tried.

To substantiate the charge against the accused, prosecution examined as many as eight witnesses including the Medical Officer who examined and treated the victim child and the investigating police officer.

The prosecution witnesses were duly cross examined by the defence side. The accused was examined U/S-313CRPC. The

defence plea is of total denial of the prosecution allegation. The accused person declined to adduce defence evidence.

I have heard Mr.M. J. Neog, learned Special Prosecutor as well as Mr.G. B. Goswami, learned legal aid counsel for the defence. Also thoroughly and meticulously scrutinised the evidence.

Now the point which requires determination is whether the accused committed aggravated penetrative sexual assault upon the minor victim child as such committed offence punishable U/S- 6 of the POCSO Act?

#### **DISCUSSION & DECISION WITH REASONS THEREOF**

- 1. Prosecution examined the complainant and her victim child as PW-1 and PW-2 respectively. Smt. Sunita Basfor (PW-3), Smt Hema Basfor (PW-4) and Sri Santosh Basfor (PW-5) are the neighbour of the complainant as well as the accused.
- 2. Evidence of PW-1 was recorded on 2<sup>nd</sup> March 2019. She has deposed that the occurrence took place about five -six months back, during "Bol-Bhom" festival last year. On the relevant morning at around 5-30 am, her minor daughter( PW-2) aged 8 years , reading in No-1 Amola patty L.P. School, came out for urinating. She was crying. On being asked as to why she was crying , PW-2 stated that her uncle Raja Robi Das (accused) had committed bad works ( means -committed sexual intercourse) with her.
- 3. She saw vagina of PW-2 was bleeding and her wearing inner garment (panty) was stained with blood. She washed the panty of her daughter. He daughter (PW-2) stated that two days back, Raja Robi Das had taken her to the house of Bhola Robi Das and had done bad-work with her. At that time family members of Bhola Robi Das were absent as they had gone to Bihar. After coming to know the details of occurrence form PW-1, she raised hue and cry, her neighbours gathered immediately. She informed about the occurrence to her husband and family members. When they asked the accused about the occurrence, he confessed his guilt and started crying. The house of the accused is within the same campus of her house. She has deposed that on the same day she lodged Ext-1 ejehar (FIR) at the police station.
- 4. In cross examination , she has made it clear that as soon as she heard the occurrence from her daughter , she raised hue and cry , neighbouring people Hemowa Basfor, Sunita Basfor Sanjoy Basfor and Santosh arrived. Quite surprisingly, the defence suggested PW-1 that the accused asked her daughter to touch his penis for which the case was lodged.

- 5. Before recording the testimony of PW-2 who is the victim child , it was ascertained that she could rational answer to the questions put to her. So she was found competent to testify.
- 6. In order to get the logical sequence of the facts of the case, evidence of PW-2 was recorded in the form of question and answer with utmost care to eliminate any leading question of the prosecution side. She stated that on the relevant day her paternal uncle (accused) took her to the house of her grand father which is a little distance from her house. The door of the house was closed by tying with a rope as her grandfather had gone to Bihar. Her uncle took her inside the house and was doing some thing by removing her pant. When she tried to raise alarm, he pressed her moth. Blood came out from her Susu (means vagina). Her uncle asked her not to disclose this fact to others. As her vagina was bleeding, she disclosed the occurrence to her mother after two days. Her mother disclosed the entire occurrence to the neighbours who handed over her uncle at the police station. PW-2 has further stated that she was taken to Civil hospital where she remained admitted for two /three days. She stated the occurrence to Magistrate -madam. She denied the suggestion that her uncle -Raja Robi Das was not at home and he did not do any bad work with her.
- 7. Sunita Basfor (PW-3) , Hema Basfor (PW-4) and Santosh Basfor (PW-5) are the neighbours of PW-1 as well as the accused. Their evidence were recorded on 13<sup>th</sup> May and 15<sup>th</sup> May 2019. They have deposed almost in the same verbatim.
- 8. According to PW-3, about 8/9 months dating back, on the relevant morning, while she went to take bath in the tube-wel, she notice husband of PW-1 was grilling his brother, accused Rajsa Robi Das as to why he had committed rape on his minor daughter (PW-2). She also noticed bleeding from the vagina of PW-2 who was telling that accused had given rupees twenty to her bring paan-mashala. Thereafter, he took her to her maternal uncle's house and committed bad work with her. She has further testified that she along with PW-4 in formed occurrence to the neighbours. They came apprehended the accused and handed over him at the police station. They also brought PW-2 to the police station. Thereafter, PW-2 was sent to Nagaon B.P. Civil Hospital for treatment.
- 9. According to PW-4, the occurrence took place in the month of August 2018. She deposed that on the relevant morning, she was sleeping at her house after returning from "Bhole-bom" (a religious walk). Her sister in law (PW-1) stated to her that accused Raja Robi Das had committed rape on her daughter (PW-2) for which her vagina was bleeding. She also noticed

bleeding on her said private parts. On being asked, PW-2 disclosed that her uncle-accused had committed bad work with her about two days back at the house of her maternal uncle. PW-4 also stated that they informed the neighbours about the occurrence. They took PW-2, at first to the police station and then to Nagaon B. P.Civil hospital wherein she was admitted for two days in connection with her treatment.

- 10. In cross examination, PW-4 replied that prior to the occurrence, there were frequent quarrels between husband of PW-1 and the accused. Their relation was not cordial.
- 11. PW-5 also deposed almost in the same line with PW-3 & PW-4. He deposed that in the month of August 2018, on a certain morning hearing hue and cry at the house of accused Raja Robi Das, he along with other neighbours rushed to his house. On being asked PW-1 disclosed that her daughter her daughter was crying because she could not pass urine and she was panic. On being asked PW-2 stated that her uncle Raja Robi Das had done bad-work with her about two days back at the house of her maternal uncle. He also found PW-2 was physically unwell. They handed over the accused at Nagaon police station. PW-2 was sent to Nagaon B.P. Civil hospital for medical treatment.
- 12. In cross examination, he has replied that there were frequent quarrels between the accused and the family of PW-1 and their relation was not cordial.
- 13. PW-6 Dr. Julina Hussain examined PW-2 at Nagon B.P. Civil Hospital on 6-8-2018, at about 4-20pm and found the followings –
- 14. Identification mark-
- (a) A mark on the chest.
- (b) A scar mark at the left hand.

Height =110 cm. Weight-18 kg.

Teeth -12/12 Breast- Not developed.

Auxiliary hair- Not Fully developed. Pubic hair- Not fully

developed.

Hymen- Ruptured with blood stained. Vaginal injury-absent.

Marks of violence- absent. Clothings-frok.

LMP- Not attained puberty.

Smear examination vide Regd No-328/R No-25878/18 reported by her shows no spermatozoa in the vaginal smear.

X-ray Examination - Not done.

Urine test for HCG Test- Not done.

Opinion-

- 1. There is evidence of recent sexual intercourse.
  - 2. There is recent evidence of physical injury on her private parts.

Hymen ruptured and there is active bleeding for which she was admitted in gynae-ward for her treatment.

- 15. PW-6 has proved that Ext-2 is the medial report and Ext-2(1) is her signature.
- 16. PW-7 being the investigating police officer has given the details of the investigation. She has deposed that on 6-8-2018, she was posted as Sub-Inspector of police at Nagaon Police station. On that date, Shri Nabin Mahanta ,the Officer in Charge of the police station, having registered the case no-2628/18 entrusted her to investigate the case. Having found the victim child (PW-2) at the police station, she gave a medical requisition and sent her to Nagaon B.P. Civil Hospital. Public also handed over the accused at the police station on the same day. The accused was arrested. On 7-8-2018, she visited Nagaon Civil Hospital, took stamen of PW-1, the mother of the victim (PW-2) at Nagaon Civil Hospital. The victim could not be examined PW-2 as she remained admitted at the hospital She accompanied by PW-1 visited the PO and examined Hema Basfor, Sunita Basfor, Sanjoy Basfor and Rinku Barman. On 10-8-2018, the victim (PW-2) had been released from the hospital and her statement was recorded. She also got recorded the statement of the victim through the court. On 16-8-2018, she collected the medical examination report of the victim child. On 27-8-18, she visited Amolapatty L.P. School and seized the admission register containing the admission of the victim by preparing a seizure list vide Ext-3. The Admission register was given in the zimma (custody) of the headmaster. She has confirmed that Ext-3(1) is her signature. On completion of investigation, she laid Ext-4 charge sheet against accused Raja Robi Das u/S-6 of the POSCO Act. She has confirmed that Ext-4(1) is her signature.
- 17. During cross examination, she has admitted that she did not give medical requisition for age determination of the victim girl. She has stated that she submitted charge sheet on the basis of the age mentioned in the FIR. PW-2 was in the companion of her mother (PW-1) during 10-8-2018 to 13-8-2018. She has denied all the relevant suggestions.

- 18. CW-1 Sarat Tamuly is the Headmaster of No-2 Amolapatty L.P.School. He has deposed that PW-2 was a student of class [Ka] of his school in 2018. He has deposed that Ext-5 (compared with Original ) is the said Admission register containing the admission of PW-2. Ext-5(1) is the relevant page and Ext-5(2) is the admission entry of PW-2 where her age is mentioned as 6+ years.
- 19. In cross examination , he has replied that birth certificate of PW-2 was not submitted and as per information of the guardian , her age was mentioned.
- 20. CW-2 Aleya Begum being the Asstt teacher of the aforesaid school has testified that PW-2 was admitted in class Ka of her school in 2018. She has proved that Ext-5(2) is the relevant admission entry of PW-2 and her age was entered as 6 +( six-plus) as per information of her mother. She has proved that police seized the Admission register vide Ext-3 and Ext-3(2) is her signature. After seizure , the admission register was given in her zimma.
- 21. In cross examination, she replied that there is no counter sign of DEEO in Ext-5. She has denied the suggestion that age of PW-2 as mentioned Ext-5(2) is not correct.
- 22. CW-3 Smt Bibharani Saikia Nath is the ward-commissioner and a seizure witness. She deposed that she is one of the member of SMC of No-2 Amola-Patty L.P. School. Police seized Admission Register in her presence vide Ext-3 seizure list. Ext-3(3) is her signature.
- 23. CW-4 Smt.F.Y. Loi , learned JMFC, Nagaon deposed that on 13-8-2018, she recorded the stamen of the victim (PW-2) in connection with Nagaon PS case No-2828/18 registered U/S-4 of the POCSO Act. After ascertaining that the victim is capable to testify, her statement was recorded without administering oath as she 8 (eight years) only. CW-4 has confirmed that Ext-6 is the statement and Ext-6(1) & Ext-6(2) are her signatures. The victim was escorted and identified by Smt Purniam Bura Gohain (PW-7).
- 24. In cross examination, she has admitted that she has not mentioned the name of the victim in the relevant order sheet and Ext-6. She denied the suggestion that Ext-6 is not the statement of PW-2.
- 25. As per Ext-1, the occurrence took place on 4-8-2018. Prosecution did not submit any birth certificate of the victim-child (PW-2).
- 26. PW-1 being the mother has deposed the age of PW-2 was eight years on 2<sup>nd</sup> March 2019 being the date of her deposition in the court. During her cross examination, the said evidence of PW-1 remains

unchallenged. Although she has not stated the date of birth of her daughter but she being the mother has fairly stated her exact daughter. The medical evidence of PW-6 and Ext-2 clearly proves that on 29<sup>th</sup> May when PW-2 was examined, she did not attain her puberty. Generally, a girl attains her puberty at the age of eleven /twelve years. So, it can be easily inferred that PW-2 was below twelve years on the date of her medical examination.

- 27. The evidence of CW-2 and Ext-5(2) reveals that PW-2 was admitted in class-(ka) of No-2 Amolapatty L.P. School in 2018 and her age was six years plus. And the age was recorded as per information of her mother.
- 28. So in the light of the above discussion of evidence and observation, it is held that at the relevant time of occurrence, PW-2 was much below twelve years.
- The accused is the own paternal uncle of PW-2. 29. She has given the details of the occurrence. She has stated that her uncle (accused) took her to the house of her dada( grand father) who was not at home. He had gone to Bihar. In side the house , her uncle Raja Robi Das removed her inner garment and did something. When she wanted to cry , he pressed her mouth. Thereafter blood came out from her Sushu (vagina). He asked her not to disclose the fact to others. Palpably , she being a minor girl and own niece under gone sever mental trauma. She could never thought that her own uncle would do such nasty work with her. Definitely because of feeling shy , defamed and mental trauma , she could not disclose the occurrence to her parents. CW-6 has proved Ext-2 statement of PW-2 was recorded by her. The evidence of PW-2 is consistent with Ext-2. There is nothing in her cross examination to show that she was tutored to say against the accused. After one/two days of occurrence, on the relevant morning when PW-2 was crying as she found trouble in urinating, then on being asked by her mother (PW-1) , she disclosed the occurrence to her. Thereafter , PW-2 disclosed the occurrence to PW-3, PW-4 & PW-5 that her uncle Raja Robi Das committed bad work with her. They also found her physically unwell. PW-1, PW-3 & PW-4 also noticed bleeding on the vagina.
- 30. Aforesaid medical evidence of PW-6 and Ext-2 proves that vagina of PW-2 was ruptured for which

- side wall was stitched. PW-6 clearly opined that she found evidence of recent sexual intercourse as hymen was ruptured with active bleeding. Thus medical evidence also corroborates the testimony of PW-2 that she was raped.
- 31. It appears from the evidence that there were quarrels between the parents of PW-2 and the accused. But there is nothing to show that PW-2 being a minor niece of the accused would falsely implicate him. At the same time, the parents of PW-2 can not be expected that at the risk of future life of PW-2 and the family reputation, they would falsely project their daughter as victim of the heinous crime against the accused who is their family member.
- 32. As per S-29 of the POCSO Act , the court presumes that the accused has committed the penetrative sexual assault upon the victim child (PW-2).
- 33. What crystallises and proved from the above appreciation and analysis of evidence is that the prosecution has proved beyond any iota of doubt that the accused inserted his private organ (penis ) inside the vagina of PW-2 who was a minor girl below twelve years at the relevant time of occurrence. Therefore, as per S-5(I) of the POCSO Act, the accused had committed the offence of aggravated penetrative sexual assault. I convict the accused U/S-6 of the Act for committing the said offence.
- 34. **Victim's compensation** It is proved from the evidence that PW-1 is a maid servant. Undoubtedly, PW-2 is not only from a very poor family but also from backward -class of the society. Because , her parents belong to Harijon community ( Sweeper class). The affect of the crime upon PW-2 is really very tremendous. She has under gone serious mental trauma and horrible stage at the dawn of her life. She lost her chastity and suffered physically.
- 35. So , in my judicious view, for rehabilitation and her future education etc , she deserves to be adequately compensated.
- 36. Accordingly, I in exercise of power U/S-357(A) Crpc read with Rule-7 of the Protection of Children From Sexual Offences Rules 2012, recommend that DLSA, Nagaon shall pay adequate, fair and reasonable compensation to PW-2 in her Bank Account of any Nationalised Bank. If the Bank Account of PW-2 is not opened already, the secretary DLSA shall help her open the account. At least 60% of the total compensation amount shall remain as fixed deposit till PW-2 attains her majority.

#### 37. **Order on sentence** :-

I have heard the accused on the point of sentence. The accused has stated that he is innocent and did not commit the offence as alleged. He is a poor labourer and was maintaining his old mother. So he has prayed for exoneration from punishment.

- 38. The aggravating circumstances of the case is that PW-2 is his own niece of the accused. Instead of treating her as like his own daughter, and guarding her safety and security, he committed sexual intercourse with her only to satisfy his lust and pleasure. Because of the crime committed by the accused, PW-2 has lost her virginity at her child hood days. Her right to live with dignity in fact is shattered because of the crime.
- 39. Mr.G.B. Goswami, learned legal aid counsel for the accused has submitted that at the time of occurrence, the accused was 19 years young boy. There is no evidence on record to show his previous conviction in any offence. So considering his age, the accused should be leniently dealt with in the sphere of sentence.
- 40. Considering the young age of the accused, the impact of the crime not only on the victim but also in the society , the accused is sentenced to 14 years RI and fine of RS-1000/only in default further RI for one month. The period which the accused has already spent as UTP in jail shall be set off from the quantum of substantive sentence. In my considered view, the said sentence would meet the ends of justice.
- 41. Furnish a certified copy of this judgement free of cost to the convicted accused forthwith.

Also send a copy of this judgment to the Secretary DLS Nagaon and District Magistrate each immediately for information and necessary action.

Before parting with the judgement I appreciate the legal assistance rendered by the learned legal aid counsel Mr. G.B Goswami. His remuneration will be paid by Secretary DLSA, Nagaon within stipulated time.

Judgement is declared and delivered in the open court under my hand seal of this court this 23<sup>rd</sup> Day of September 2019.

Judgement prepared and corrected by me AJS )

( A Rahman,

( A Rahman, AJS ) Nagaon Special Judge,

Special Judge , Nagaon

# **APENDIX**

## **Prosecution Witnesses**

PW-1 Sita.

PW-2 Miss - X (Victim Child)

PW-3 Smti. Sunita Basfor.

PW-4 Smti. Hema Basfor.

PW-5 Sri Santosh Basfor.

PW-6 Dr. Julina Hussain.

PW-7 Smti Purnima Buragohain.

## **Court Witnesses**

CW-1 Sri Sarat Tamuly.

CW-2 Smti. Aleya Sultana

CW-3 Smti. Bibharani Saikia Nath

CW-4 Smti. F.Y Loi

#### **Prosecution Exhibits**

Ext-1 ejehar

Ext-2 is the medial report

Ext-3 seizure list

Ext-4 charge sheet

Ext-5 School admission register

Ext-6 is the statement of Smti. F.Y Loi

## **Defence Witness and Exhibits**

NIL

( A Rahman, AJS )

Special Judge , Nagaon