IN THE COURT OF SPECIAL JUDGE ::::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 17 of 2014 U/S 6 of POCSO Act 2012 (Arising out of Kakotibari P.S. Case No. 20/2014)

State of Assam

-Vs-

Sri Miton Sabar @ Ravan Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D.K. Gohain, Advocate

(State defence counsel)

Date of framing Charge : 04.08.2014

Dates of Evidence : 29.11.2014, 21.01.2015, 11.02.2016,

18.07.2016, 20.02.2017, 12.07.2017,

31.08.2017

 Date of S/D
 :
 16.12.2017

 Date of Argument
 :
 08.03.2018

 Date of Judgment
 :
 22.03.2018

J U D G M E N T

- 1. Prosecution case, in brief, is that on 25.03.2014, one Sri Chandua Mura lodged an FIR with O/C, Kakotibari P.S. alleging, inter alia, that on 16.03.2014 and 17.03.2014, while he was absent in his house, accused Miton Sabar @ Ravan committed rape on his 10 years old daughter victim 'S' (name withheld) by taking her on the backside orchard of the house.
- 2. On this FIR, Kakotibari P.S. Case No. 20/2014, U/S 376 IPC and

Section 4 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused Miton Sabar @ Ravan has surrendered before the court of learned JMFC, Charaideo at Sonari and he was remanded to judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 376 IPC and Section 4 of POCSO Act, 2012.

- 3. Upon taking cognizance on the charge sheet, copies were furnished to the accused and after hearing both sides, vide order dated 04.08.2014, my learned predecessor in office has framed the charge U/S 6 of POCSO Act, 2012 against the above named accused person to which he pleaded not guilty and claimed to stand trial.
- During trial, prosecution side has examined 10 witnesses including the victim, M.O. & I.O. 4. Upon completion of the prosecution evidence, accused is examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he is called upon to enter into defence.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. D.K. Gohain, learned State defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 6. (I) What was the age of the victim on the date of incident?
 - (II) Whether on 16.03.2014 and 17.03.2014, accused Miton Sabar @ Ravan has committed penetrative sexual assault on the victim 'S' aged by taking her on the backside orchard?

DECISION AND REASONS THEREOF

7. PW. 1, the victim S, the victim in her evidence deposed that while her parents are absent in the house, the accused called her and took her under the bamboo bushes, opened her clothes and committed misdeeds. Accused has

also opened his clothes. On making hue and cry, accused gagged her mouth. Accused has penetrated his penis to her vagina. She got pain. Subsequently, she informed the matter to Golapi Mura and Sunita and others. Police took her for medical examination and also interrogated her and recorded her statement. She also got pain in her neck and in her body while laying her on the ground by the accused. In her cross examination, PW 1 admitted that on the date of incident, she informed the matter to her grandmother and on the next date of the incident, she informed the matter to her aunt. She did not disclose the incident at the residence of her grandmother. She use to call Romen Phukan as her maternal uncle. Accused had some sour relation with said Romen. Said Romen took her to police station and to court along with her parents. On the next day of the incident, her father lodged the FIR. She denied that on being tutored by Ramen, she deposed falsely.

- 8. PW. 2 Sri Chandua Mura, the father of the victim in his evidence deposed that at the time of occurrence the victim S was aged about 10 years. After three days of the occurrence, on returning home, his daughter informed him regarding commission of rape by the accused on her by taking her on the bamboo bushes and by opening her clothes. On this, he lodged the FIR by putting his thumb impression. In his cross, he stated that as the matter was reported in the news papers, the police asked him to file the FIR. He cannot say about the contents of the FIR. He did not go to the police station on the next day of the occurrence. He denied that as he has mortgaged the land to accused and Romen, there was a quarrel between them and on that he filed this false case.
- 9. PW. 3 Smt. Malati Mura, the step-mother of the victim in her evidence deposed that after the incident the victim came to her and informed that accused has committed misdeed with her. In her cross she stated that she has not seen any such incident. The victim stated about commission of misdeed for 2-3 days.

- 10. PW. 4 Smt. Dipti Garh in her evidence deposed that upon coming of police to their village, from others she heard that accused has committed misdeed with the victim S. He did not inquire about the incident from the victim.
- 11. PW. 5 Smt. Golapi Mura in her evidence deposed that victim S has informed her that accused touched her cheeks which she disliked. In her cross PW. 5 admitted that victim did not tell her regarding commission of any misdeed and simply stated regarding touching of cheeks only.
- 12. PW. 6 Smt. Sunita Garh in her evidence deposed that on the date of incident, while victim S came to her house for stay, victim disclosed that accused has uttered some indecent words to her. Victim S did not allege any other incident.
- 13. PW. 7 Dr. Dwarika Sahu in his evidence deposed that on 25.03. 2014 he examined the victim S in connection with Kakatibari P.S. Case No. 20/14 and upon examination, he found that age of the victim is above 15 years. No evidence of recent sexual intercourse detected. There is a radish mark over mid line of anterior aspect of neck of size 1 cm x 1cm. There may be attempt for sexual intercourse. Ext. 1 is the medical report. In his cross-examination he admitted that he mentioned about attempt for sexual intercourse basing on the version of the victim.
- 14. PW-8 Smt Anjumani Gogi, in her evidence deposed that about 2 years back, she heard that accused has committed misdeed with victim S. She did not inquire from the victim. In her cross-examination she stated that she heard the incident while gossiping by local people. There was a village meeting and in the meeting, the village elders found that the allegation as false.
- 15. PW-9 Sri Biswajeet Hazarika in his evidence deposed that on 25.03.2014, he wrote one FIR on being requested and dictated by Chandua Mura of Disangpub Gaon. After writing the FIR, he read over the contents to the informant and on his satisfaction, he took his LTI mark in the FIR. Exbt. 2 is the said FIR. In his cross-examination he admitted that he has no personal

knowledge about the incident in the FIR. Police called him to PS and requested to write the FIR for the informant.

16. PW-10 Sri Rajib Das in his evidence deposed that on 25.03.2014, while he was posted as O/C Kakotibari PS, in the newspaper namely NIYOMIYA BARTA issue dated 23.03.2014, one news item was published at page 5 regarding committing rape by one 60 year old man upon a 10 years old minor girl at Banamali Disangpub Gaon under Kakotibari PS. As no FIR was received for the above incident as reported, he made a G D Entry vide Kakotibari PS G D Entry No. 445 dated 25.03.2014. Exbt. 3 is the certified copy of Kakotibari PS G D Entry No. 445 dated 25.03.2014. After making the G D Entry, at about 9.35 AM he went to the residence of the victim at village Disangpub Gaon as mentioned in the news item and recorded her and her parents' statement. He also visited the place of occurrence (PO) as shown by the victim. The PO is bamboo garden on the back side of the house of the victim. Exbt. 4 is the sketch map. Exbt. 4 is my signature. Exbt. 5 is another sketch map where the victim got regularly molested. On the same day i.e. 25.03.2014, Chandua Mura lodged formal FIR. On this FIR Kakotibari PS case No. 20/14 was registered u/s 376 IPC r/w section 4 of POCSO Act and took charge to investigate the case. On taking charge of investigation, on the same day victim was sent for medical examination. On 26.03.2014 victim was sent to Court for recording her statement u/s 164 Cr.P.C. During investigation he collected the medical report and statement given by victim in court. Exbt. 6 is the statement of the victim given u/s 164 Cr.P.C. Accused Miton Sabar @ Ravan has surrendered before SDJM(M) Charaideo at Sonari on 20.05.2014 wherefrom accused was remanded to judicial custody. On completion of investigation, he submitted charge sheet against the accused u/s 376 r/w section 4 of POCSO Act. Exbt. 7 is the charge sheet. In his cross-examination, the I/O has admitted that the news papers dated 23.03.2014 on which the alleged news item was published was not made part of the CD or FIR or the G D Entry. He has not inquired about the news reporter and did not interrogate the reporter or the editor of the news paper.

He made the G D Entry on 25.03.2014 only after knowing about the publication of the news. There are some apparent over writings on the date of occurrences in the FIR. During investigation, it revealed that the victim was a student of class IV. He has not collected any age certificate from the school. As per Exbt. 5, place of occurrence was orchard of Bubul Gogoi. He examined said Bubul Gogoi as witness. During investigation, he has not recorded the statement of the accused as he surrendered in court. Accused was an aged person.

- 17. Point No. I: So far age of the victim is concerned, the victim while adducing evidence as P.W.1 has claimed her age as 10 years. P.W. 2, the father of the victim also stated that at the time of alleged incident his daughter was aged about 10 years. The Medical Officer (P.W.7) however stated that the age of the victim is above 15 years. No challenge was made on the age of the victim by the defence either through P.W. 1 and P.W. 2 or through P.W. 7. As the evidence of M.O. (P.W. 7) being an opinion only and as the father of the victim is the best person to say the age of his daughter, I am of the opinion that the evidence given by P.W. 2 regarding age of the victim i.e. victim is aged about 10 years at the time of alleged incident is found more acceptable and as such, I hold the age of the victim as about 10 years at the time of alleged incident.
- 18. <u>Point No. II:</u> So far allegation of rape is concerned, from the evidence of victim it appears that in absence of her parents, accused called her to the bamboo orchard and after opening her clothes committed misdeeds. Accused also opened her clothes. On attempting to make hue and cry, accused gagged her mouth. Accused penetrated his penis to her vagina and she got pain. Thereafter she rushed to the house of Golapi Mura and Sunita Garh and informed them about the incident. Thereafter victim also informed the incident to her step-mother. Police got her medically examined. She also got pain on her neck due to laying her on the ground. In her cross examination, she admitted that on the date of incident she went to the house of her grand-mother and stayed there and on the next day she informed the matter to her aunt. She did

not report the matter to her grand-mother. From her evidence it also appears that on the next day of the incident the matter was reported to police. So from the above it appears that she informed the matter to Golapi Mura (P.W.5) and Sunita Garh (P.W.6). However, from the evidence of P.W. 5 Golapi Mura it appears that the victim has reported her regarding touching of her cheek only by the accused. P.W. 5 specifically admitted that the victim did not tell her about any misdeed by the accused except touching her cheek. On the other hand, P.W. 6 Sunita Garh stated that while the victim was called to sleep at her residence, the victim reported her that 'accused told her indecent words' and except this victim did not alleged anything. So from the above evidence, it appears that though victim has stated about the commission of misdeed by the accused to them, but both the witnesses i.e. P.W. 5 and P.W. 6 did not support the allegation of victim regarding commission of rape by the accused.

- 19. Coupled with above, if we look at the evidence of P.W. 7, the medical officer, it appears that the victim was brought to him by police with alleged history of sexual intercourse by one person two days back outside her house. But upon examination of the victim PW 7 did not find any evidence of recent sexual intercourse except a radish mark over mid-line of anterior aspect of neck. In his cross PW 7 has admitted that such type of injury may cause by fire wood. PW 7 has also admitted that in his report he has mentioned regarding attempt of sexual intercourse based on the version of the victim. The above finding of medical officer casts a serious doubt on the evidence of victim so far is concerned. Has there been forceful sexual intercourse, certainly some mark of violence could have been found on the private parts of the victim.
- Apart from above, in his cross-examination, P.W. 8 has stated that there was a village meeting and in the meeting the village elders found that the allegation was false. P.W. 2, P.W. 3 and P.W. 4 are hearsay witnesses and they have stated that they have heard from the victim regarding commission of misdeed by the accused. On the basis of above materials it appears that the evidence of the victim as stated by P.W.2, P.W.3 and P.W.4 did not get any

support from the medical evidence and from the evidence of P.W.5 and P.W.6 to whom the victim has reported the matter soon after the occurrence. It creates a huge doubt on reliability of the evidence of P.W.1, the victim.

- 21. In the course of argument hearing, learned Advocate for the defence by referring to the cross examination part of the P.W.1 and P.W.2 has argued that admittedly there was an ill relation between the accused and one Romesh Phukan on some land dispute and at the instigation of said Romesh Phukan, this false case was concocted. On looking at the cross examination of P.W. 1, it appears that Romesh Phukan has accompanied her to the Police Station as well as to court on the date of evidence and said Romesh Phukan has some sour relation with the accused. P.W. 2 has admitted that he had mortgaged some land to Romesh Phukan, but denied the giving of any land on mortgage to the accused. He denied the defence suggestion that for the land dispute, he has quarrel with the accused and filed this false case.
- 22. Further more, from the FIR and the evidence of P.W. 3 it appears that accused has committed rape on the victim on two successive days, but the victim or informant were silent on this aspect.
- I found force in the submission of learned Advocate of the accused that the evidence of the victim cannot be relied upon being not corroborated by the witnesses namely P.W. 5 and P.W. 6 to whom she has reported the matter immediately after the occurrence and thus accused is entitled to the benefit of doubt. The argument of learned P.P. regarding applicability of Section 29 of POCSO Act 2012 cannot be applied in this case in view of apparent contradictions in evidence of victim.
- Last but not the least on the list of reason to disbelieve the evidence of victim it is an admitted fact that, the alleged incident of penetrative sexual assault took place on 16.03.2014 and 17.03.2014 but FIR was lodged only on 25.03.2014 that too at the initiative of I/C, Sepon Out Post after publication of news item in the local news paper. No explanation was given by

the informant for causing delay in lodging the FIR. It also creates a suspicion on the genuineness of the case.

- 25. To sum up the discussions, I am of the opinion that the evidence of victim alone by using presumption u/s 29 of Pocso Act cannot be relied upon being not trustworthy. Accused is entitled for the benefit of doubt.
- 26. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 6 of POCSO Act, 2012 or any other minor offence against the accused Sri Miton Sabar @ Ravan and he is acquitted from the charge U/S 6 of POCSO Act, 2012 and set at liberty forthwith.
- 27. Bail bond executed by the accused and his surety are extended for another six months from today U/S 437-A Cr.P.C
- 28. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 29. Send a copy of the judgment to learned District Magistrate, Charaideo U/S 365 Cr.P.C.
- 30. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 22nd day of March 2018 Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

1. Prosecution witnesses:

- P.W.1 (Victim)
- P.W.2 Sri Chandua Mura (Informant)
- P.W.3 Smt. Malati Mura
- P.W.4 Smt. Dipti Garh P.W.5 Smt. Golapi Mura
- P.W.6 Smt. Sunita Garh
- P.W.7 Dr. Dwarika Sahu (M.O.)
- P.W.8 Smt. Anjumoni Gogoi
- P.W.9 Sri Biswajit Hazarika
- P.W.10 Sri Rajib Das (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. Court witnesses None
- 4. Exhibits by prosecution -
 - Exbt.1 Medical report
 - Exbt.2 FIR
 - Exbt.3 Certified copy of Kakotibari P.S. GD Entry No.445, dated 25.03.2014
 - Exbt.4 Sketch map
 - Exbt.5 Sketch map
 - Exbt.6 Statement of the victim given U/S 164 Cr.P.C.
 - Exbt.7 Charge-Sheet

Special Judge, Sivasagar: