#### IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present: - Sri S. K. Poddar, AJS Special Judge, <u>Sivasagar</u>.

# Spl. (P) Case No.21 of 2014 U/S 6 of POCSO Act. (Arising out of Demow P.S. Case No.226/14)

State of Assam

-Vs-

Md. Pinku Rahman ...... Accused

### <u>APPEARANCE:</u>

For the prosecution : Sri A. K. Bora, P.P.

For the accused SK. Shamsher, Advocate.

24.07.2015

Date of framing charge : 18.01.2016, 23.08.2016, 17.03.2017

Date of Argument 17.03.2017 : 17.03.2017 : 28.03.2017 Date of Judgment

#### J U D G M E N T

1. Prosecution case, in brief, is that on 18.07.2014, Smt. Rumena Begum lodged an FIR with O/C, Demow Police Station alleging, inter alia, that on 16.07.2014, at about 3.00 p.m. accused Pinku Rahman came to her residence and committed rape on her 12 year's daughtervictim 'X' (name withheld), by taking the advantage of absence of other family members in the house.

- 2. On receipt of the FIR, Demow P.S. Case No.226/2014, U/S 6 of POCSO Act was registered and investigated into the case. During investigation, victim 'X' was medically examined and also got recorded her statement in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 6 of POCSO Act, 2012 showing the accused absconder.
- 3. After filling of the charge sheet, accused has surrendered before this court and was allowed to go on bail. Upon furnishing copy to the accused person and after hearing both the sides, charge U/S 6 of POCSO Act, 2012 was framed and read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 4. To bring home the charge, prosecution side has examined the victim 'X' as P.W.1 along with four other witnesses including Medical Officer Dr. Sadhan Bora as P.W.5.
- 5. Examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material was found against the accused for the alleged offence.
- 6. I have heard argument of learned P.P. Mr. A.K. Bora and Sk. Shamsher, learned defence counsel, and gone through the evidence and documents. I have considered the submission of both the sides.

#### POINT FOR DETERMINATION IS -

7. (i) Whether on 16.07.2014, at about 3.00 p.m., accused Pinku Rahman committed aggravated penetrative sexual assault on the victim 'X' who is below 12 years?

### **DECISION AND REASONS THEREOF:**

8. P.W.1 the victim 'X' in her evidence deposed that about five months of the occurrence, accused proposed her to start love affair with her, but she refused. She further deposed that accused also intended to commit Spl. (P) Case No.21 of 2014Page 2 of 6

misdeed with her but failed as her sister Pinky arrived there. Thereafter an altercation took place between them. On this incident, her mother lodged an FIR. She gave her statement in the court. Exbt.1 is her statement and Exbt.1(1) and Exbt.1(2) are her signatures. She was also medically examined. In her cross she deposed that prior to the occurrence, quarrel took place between her father and accused's father.

- 9. P.W. 2, the informant Smt. Rumena Begum in her evidence deposed that about a year back, one day, her elder daughter Pinky told her that she has seen the accused and victim 'X' together in one room and when she arrived there, the accused left the place. She further deposed that as per advice of the villagers, she lodged Ejahar. Accused did not misbehave the victim 'X' and now she is not interested to proceed further with this case. In her cross-examination, she deposed that misunderstanding which took place between them was settled with the help of villagers. She has also no objection in acquittal of the accused.
- 10. P.W.3 Smt. Pinky Begum in her evidence deposed that about a year back, one day she saw the accused and her younger sister, i.e. victim 'X' together in one room, and on suspicion that accused might have committed misdeed with victim 'X', she informed the matter to her mother. Later on her mother lodged Ejahar. P.W.3 further deposed that she did not see any incident of doing misdeed by accused with victim 'X'. She also gave her statement in the court. Exbt.3 is her statement and Exbt.3(1) is her signature. In cross examination P.W.3 deposed that she has no objection in acquittal of the accused.
- 11. P.W.4 Sri Prabhakar Singh, the I.O. of this case in his evidence deposed that on 18.07.2014 during investigation, he visited the place of occurrence, recorded the statements of the witnesses and also prepared Sketch map (Ext.4). Victim was medically examined. He collected the medical report.

During investigation he seized a skirt and one yellow colour top of the victim vide seizure list Ext.5. On completion of investigation, he submitted Charge-Sheet against the accused U/S 6 of POCSO Act (Ext.6).

- 12. P.W.5 Dr. Sadhan Bora, in his evidence deposed that on 19.07.2014, on police requisition, he examined the victim 'X' in connection with Demow P. S. Case No.226/2014 U/S 6 of POCSO Act and upon examination opined that (i) her age is above 16 years and below 18 years, (ii) no any recent sign of sexual intercourse, (iii) no any injury detected on her private parts, & (iv) she is not pregnant at the time of examination. Pw 5 has proved his report as Ext.4.In cross examination P.W.5 deposed that the patient gave her brief history as kidnap.
- 13. From the above evidence on record, it appears that as per the evidence of victim 'X', accused proposed to start love affair with her but she refused and on this accused intended to commit some misdeed with her, but by that time her elder sister arrived there and an altercation took place. P.W.3 Pinky Begum in her evidence simply stated that she saw the accused and the victim 'X' in one room and on suspicion that accused might have committed some misdeed, she informed the matter to her mother. She further admitted that she has not seen any incident of doing misdeed with the victim 'X'. P.W.2, the mother of the victim 'X' in her evidence deposed that she heard the matter from her elder daughter Pinky. She categorically stated that accused did not misbehave her daughter, and she is no longer interested to proceed with this case. In cross she furtheradmitted that due to some misunderstanding the case was filed and she has no objection in acquittal of the accused. It may be mentioned here that admittedly the accused is the first cousin of the victim 'X'. Medical Officer (P.W.5) in his evidence stated that the victim 'X' came to him with a brief history of kidnap. Victim in her cross-examination admitted that there was some dispute between the two families prior to this incident.

- The evidence as discussed above do not show any sexual assault either penetrative or even non-penetrative by the accused on the victim. Admittedly there was some misunderstanding between the parties and the FIR got lodged.
- 15. Considering all above, I hold that the ingredients of Section 6 of POCSO Act, 2012, or any other minor offence are missing. Prosecution has miserably failed to prove the ingredients of the charge framed against the accused person.
- 16. Accordingly, accused Pinku Rahman is acquitted from the charge U/S 6 of POCSO Act, 2012.
- 17. Bail bonds executed by the accused and his surety stand extended for another six months from today.
- 18. 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.
- 19. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 20. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand & Seal of this Court on this the, 28<sup>th</sup> day of March, 2017 at Sivasagar.

Special Judge,

<u>Sivasagar</u>

## <u>APPENDIX.</u>

## 1. Prosecution witnesses:

- P.W.1 Victim X
- P.W.2 Smt. Rumena Begum (Informant)
- P.W.3 Smt. Pinky Begum
  - P.W.4 Sri Prabhakar Singh
  - P.W.5 Dr. Sadhan Bora (M.O.)
- 2. <u>Defence witnesses</u> Nil.
- 3. <u>Court witnesses</u> Nil.
- 4. Exhibits by prosecution -
- Exbt.1 164 Cr.P.C.statement of victim.
  - Exbt.2 FIR
  - Exbt.3 164 Cr. P.C. statement of Pinky Begum.
  - Exbt.4 Sketch map.
  - Exbt.5 Medical report.
  - Exbt.6 Charge-Sheet.
- (S.K. Poddar),

Special Judge,

Sivasagar: