# IN THE COURT OF SPECIAL JUDGE :: KOKRAJHAR

Present :- Sri C. Chaturvedy,

## **SPECIAL CASE NO.02/2019**

U/S.4 of POCSO Act

STATE OF ASSAM

Vs

Md. Gaji Rahman S/O. Md. Ramjan Ali Vill- Jamunatari P.S. Gossaigaon Dist. Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P.

Learned Legal Aid Counsel Mr. Apple Mahmud

Charge framed on 06.09.2019

Evidence recorded on 21.09.2019; 15.11.2019;

29.11.2019; 13.12.2019;

10.01.2020.

Argument heard on 19.02.2020

Judgment pronounced on 28.02.2020

# <u>JUDGMENT</u>

1. The case of the prosecution is that one xxx, father of the victim, lodged an FIR at Gossaigaon Police Station alleging that on 6.10.2018 at about 1 PM, accused Gazi Rahman committed rape on his minor daughter, xxx, the victim, at a pump house near his agricultural fields.

- On 14.10. 2018, the victim wanted to commit suicide by slitting her wrist and that is how he came to know about the occurrence of rape.
- 2. On receipt of the FIR, a case under Section 342/506 of IPC, R/W Section 4 of POCSO Act was registered and after completion of the investigation, a charge sheet was laid against the accused Md. Gaji Rahman for commission of offences U/S 342/506 of IPC, R/W Section 4 of POCSO Act.
- 3. Copies of the relevant documents were furnished to him. After hearing both sides charges under Section- 4 of POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial. The case was transferred to this Court for disposal
- 4. In the course of trial prosecution examined 9 (nine ) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

#### 5. **POINTS FOR DETERMINATION:**

(i) Whether the accused committed penetrative sexual assault on the victim?

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

6. Pw1 xxx, the father of the victim, deposed that about 1 year back when he returned home after daily labour work, he came to know that his daughter xxx, the victim, had gone to his agriculture field, near the residence of accused, to bring vegetables and she has not returned home since then. He came to know from other people that Gaji Rahman had abducted his daughter. At that time his daughter was about 15 years of age. In this regard, he lodged an FIR at Gossaigaon Police Station. He had put his thumb impression in the FIR. After lodging the FIR police recovered his daughter. Her statement was recorded by the Court U/S 164 of Cr.PC and her custody was given to him. The victim is presently under his custody.

- 7. In cross examination Pw1 deposed that he had not obtained the birth certificate of his daughter. He deposed that he had not submitted any age proof of his daughter at the time of filing FIR. He also deposed that he does not know the contents of FIR. He was asked to put thumb impression in the FIR and accordingly he put his thumb impression in the FIR. Pw 1 admitted that the admission of his daughter in the School was in over- age.
- 8. Pw2 xxx, the mother of victim, deposed that her daughter is presently aged about 16 years. About 1 year back she had gone to Tulsibil. Her husband used to work at Hatipota. In the afternoon, her daughter had gone to field to pluck raddish. The residence of Gaji Rahman is near their paddy field. When she returned from Tulsibil her daughter told her that while plucking raddish, accused Gaji Rahman took her inside a Pump house and committed rape on her. She informed her husband who came on the following day. There was village meeting but as the matter could not be resolved, her husband lodged an FIR. Her daughter was medically examined and her statement was recorded in the Court. After the occurrence the accused was arrested and after he was released on bail, he again committed rape on her daughter. Her husband again filed a seperate FIR against the accused.
- 9. In cross examination Pw2 deposed that near her paddy field there are houses of Sahar Ali alias Khurmawala, Anar Ali, Nuruddin, Jalal Mistri. None of these persons' houses have any boundary in their house. Pw 2 also deposed that her daughter informed her on the very date of occurrence. Pw2 denied the suggestion that she stated before the police that she had come to know about the occurrence on 13.10.2018. Pw 2 admitted that her daughter did not show her private parts and that she had not seen any blood stains in the dress of her daughter. Pw2 denied the suggestion she had stated before the police that her daughter had washed the clothes which she was wearing at the time of occurrence of the offence. Pw 2 admitted that there was delay in lodging the FIR due to village meeting . Pw 2 admitted that accused Gaji Rahman and her daughter had decided to marry. Pw 2 deposed that after Gaji Rahman was released on bail, her daughter went to the residence of Gaji

Rahman and stayed there for one week and that they had not filed any FIR when her daughter was in the residence of accused.

- 10. Pw3, xxx, the victim, deposed that about 1 ½ years back she had gone to her field to pluck radish. At that time, accused caught her and took her to a pump house nearby and started beating her. Thereafter, he committed sexual intercourse with her and and left. She returned to her house and informed her mother. She was medically examined at Kokrajhar Hospital. She was also produced before the Magistrate. Her statement was recorded.
- 11. In cross examination Pw3 deposed that she does not remember her date of birth. She deposed that she studied in Class-IV at Jamunatari No.550 L.P School. She admitted that the pump house is situated near the paddy field and there is a bamboo bush near their paddy field. She had screamed when accused dragged her to the pump house. She deposed that when the accused was beating her she had screamed. After beating her, the accused went to his house and she returned to her house. She deposed that the clothes which she was wearing at the time of occurrence is at the residence of accused Gaji Rahman. Pw 3 admitted that her mother had told her to give a statement in the manner as stated in the statement U/S 164 of CrPC. Today also her mother had told her to give the statement in the manner as deposed.
- 12. Pw4 Dr. Sushma Brahma deposed that she had examined the victim and found that her age is in between 18 to 20 years and that she is habituated to sexual intercourse.
- 13. In cross examination Pw4 deposed that she had not found any marks of violence of the body and private parts of victim.
- 14. Pw5 Ms. Nurjahan Bibi, Pw6 Md. Hajimuddin, Pw7 Md. Nuruddin Sheikh deposed that they had heard that there has been a dispute between the accused and the victim but they do not know the details.
- 15. Pw8 Md. Eyad Ali deposed that he is a village headman. About a year back father of the victim had brought to his knowledge that accused had committed rape on his daughter. In this regard there was a

village meeting and accused was also present in the meeting. Accused confessed before the villagers that he had sexual intercourse with the victim. Thereafter, the father of the victim lodged an FIR because there was no settlement in the village meeting.

- 16. In cross examination Pw8 deposed that in village meeting they note down the proceeding but in this meeting there was no written proceeding. Pw 8 has denied the suggestion that there was no meeting in the village. The meeting took place 3 days after the occurrence.Pw8 has also denied the suggestion that he did not state before police that in the village meeting accused confessed his guilt. Pw8 has also denied the suggestion that he had deposed falsely.
- 17. Pw9 Sri Akhay Narayan Dev deposed that on 15.10.2018 he was posted as In-charge at Tulisbil Police Out Post under Gossaigaon Police Station. On that day he was entrusted with the investigation of an FIR lodged by Sahar Ali at Gossaigaon Police Station in connection with which a case U/S 342/506 of IPC, R/W Section 4 of POCSO Act was registered. In the course of investigation he recorded the statement of the complainant, victim and other witnesses. He also went to the place of occurrence. He took steps for causing the medical examination of the victim at RNB Civil Hospital. He also took steps for recording of statement of the victim U/S 164 of Cr.PC.Pw9 deposed that from the School records, it came to light that victim is a minor hence, having found sufficient materials against the accused Gaji Rahman, submitted charge sheet against him for commission of offences U/S 342/506 of IPC R/W Section 4 of POCSO Act. Material Exhibit-1 is the School certificate collected by him. Exhibit-3 is the charge sheet and Exhibit-3(1) is his signature.
- 18. In cross examination of Pw9 deposed that the statement of the victim U/S 164 of CrPC was recorded on 22.10.2018. He deposed that the victim was with her parents till the recording of her statement U/S 164 of CrPC. He deposed that he received the School certificate on 26.11.2018 and he received the medical report on 27.11.2018. He deposed that he had not seized School admission register and he had

personally not seen the School Admission register. He deposed that he had not examined the headmaster of the School as witness and that, he had not investigated the discrepancy appearing in the age of the victim in the school certificate and in the medical report. He deposed that he had not seized apparel of the victim because he was told by family members that they had washed the clothes. Pw-9 deposed that Pw-2 Jabeda stated before him that she first came to know about the occurrence on 13.10.2018. Pw-2 stated before him that she had washed the clothes of Salema. Pw- Yad Ali did not state before him that accused confessed before the villagers that he committed rape on Salema. Pw9 has denied the suggestion that he had not investigated the case properly.

- 19. The learned defence Counsel has argued that as per the medical opinion the victim had attained the age of 18 years at the time of occurrence of offence and considering the other attending circumstances the relationship between the accused and the victim was consensual in nature hence, the accused may be acquitted from the charges.
- 20. On the other hand, the learned Special P.P. has submitted that in the course of investigation, the Investigating Officer had obtained the School certificate which shows that the date of birth of the victim is 15.06.2004, thus, the victim is minor.
- 21. It is seen that there was an apparent conflict between Medical opinion and the School documents. M. Ext-1, the school certificate, shows that the victim passed the Lower Primary section on 31.12.2014 and at that time her age was 10 years 6 months and 16 days. The occurrence took place in the year 2018 and therefore, according to School document, the victim was aged about 14 years at the time of incident. It also needs to be taken into account that the victim comes from family where the parents are not literate. Hence, some variation in the date of birth is acceptable. However, under no circumstances the victim can be said to have attained the age of 18 years on the date of occurrence for, that would mean that the victim had passed Lower

Primary section at the age of 14 years and, in other words, the victim first got admitted to school at the age of 10 years. The medical opinion is based on certain medical parameters and it may differ from person to person considering individual medical features. Since, the school certificate pertains to the year 2014 it cannot be said to be a fabricated document when the occurrence took place 4 years after the victim left the school. Hence, in the present case applying the principle of preponderance of probabilities, I believe the victim had not attained the age of 18 years at the time of occurrence of offence.

- 22. Coming now to the charge under Section 4 of the POCSO Act, I would like to point that Section 29 of the POCSO Act provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit theoffence, as the case may be unless the contrary is proved.
- 23. In *Noor Aga v. State of Punjab, (2008) 16 SCC 417* it was held by the Hon'ble Supreme Court that the provision for reverse burden is not only provided for under the special Acts but alsounder the general statutes like the Penal Code. The Evidence Actprovides for such a burden on an accused in certain matters, as,for example, under Sections 113-A and 113-B thereof. It further held that enforcement of law, on the one hand, and protection ofcitizen from operation of injustice in the hands of the lawenforcement machinery, on the other, is, thus, required to be balanced. The constitutionality of a penal provision placing burden of proof on an accused, thus, must be tested on the anvil of the State's responsibility to protect innocent citizens. The court must assess the importance of the right being limited to our society and this must be weighed against the purpose of the limitation. The purpose of the limitation is the reason for the law or conduct whichlimits the right.
- 24. The Hon'ble Supreme Court in Noor Aga (supra), added that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden

exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused.

- 25. In the present case, the victim stood her ground that when she went to the paddy fields, the accused caught her and took her to a pump house nearby and started beating her. Thereafter, he committed sexual intercourse with her and and left. This is a damning piece of evidence with no indication that the sexual intercourse was consensual in nature. Further, since the victim has been held to be a child, her consent becomes irrelevant. The onus on the accused is therefore two fold; namely, that no incident ever took place, secondly, even if such incident took place it was with consent. In second circumstances, the consent can only be said to be a mitigating circumstances with respect to sentencing.
- 26. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 it was held that while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before

relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

27. In the light of law as laid down in the case of Gurmit Singh, when I read the evidence of pw 3, the victim, with respect to arguments pertaining to delay in lodging the FIR, wavering evidence of pw 1, the father, it is found that the evidence of pw 3 is of sterling character and she deposed specifically about the ordeal she went through. The evidence does not suffer from any exagerration and is found to be

precise. Thus, pitted against such clincing evidence, the onus placed on the accused stands not discharged, for there are no circumstances on record to show that victim has any motive to depose falsely against the accused. In the given circumstances, the victim's sole testimony is found reliable and accordingly conviction can be based on the testimony of the victim.

- 28. Since the prosecution has been able to establish that accused committed penetrative sexual assault on the victim, the ingredients of Section 4 of the POCSO Act stands established and hence the point for determination is answered in negative.
- 29. I have heard the accused on the point of sentence. He prayed for leniency. He submits that he comes from a poor family and that his prolonged detention will put his family to immense hardship.
- 30. I have considered the plea of the accused. The fact however remains that accused subjected the victim to immense mental trauma by subjecting her to pentrative sexual assault. The act of the accused cannot go unpunished without a severe punishment. Considering the act of the accused I believe a sentence of ten years of rigorous imprisonment with sentence of payment of fine of Rs 25,000 will meet the ends of justice.

#### **ORDER**

Accused Gazi Rahman is convicted for the charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs 25,000 in default to undergo imprisonment for 6 months.

A free certified copy of the judgment be furnished to convict.

A recommendation is made to the District Legal Services Authority for payment of adequate compensation to the victim under Section 357A CrPC.

Mr. Apple Mahmud, Advocate shall be entitled to his remuneration as Legal Aid Counsel.

A copy of this judgment be sent to the District Magistrate, Kokrajhar

Given under the hand and seal of this Court on this  $28^{th}$  day of February, 2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

## <u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 Statement
Exhibit-2 Medical report
Exhibit-3 Charge sheet

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 victim's father

P.W.2 victim's mother

P.W.3 xxxx victim

P.W.4 Dr. Sushma Brahma

P.W.5 Ms. Nurjahan Bibi

P.W.6 Md. Hajimuddin

P.W.7 Md. Nuruddin Sheikh

P.W.8 Md. Eyad Ali

P.W.9 Sri Akhay Narayan Dev

4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge Kokrajhar