DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE AT SIVASAGAR ::::

Ref. :- Spl. (P) Case No.6 of 2014

{Arising out of G.R. Case No.681/13 (Namtola P.S. Case No.47/2013)

U/S 6 of POCSO Act.

Present :- Sri S. Khound.

Special Judge, Sivasagar.

The State of Assam : Prosecution

-Vs-

Sri Sankar Prasad Rana : Accused

APPEARANCE:

For the prosecution/ : Sri A.K. Bora, State of Assam Public Prosecutor.

For the accused : Sri Anil Ch. Dutta, Advocate,

Sivasagar.

Dates of depositions : 16.12.2014, 30.03.2015, 23.07.2015,

08.09.2015, 11.01.2016.

Date of argument : 26.04.2016

Date of Judgment : 10.05.2016

JUDGMENT

- The accused Sankar Prasad Rana, son of Late Ram Roy Shah, resident of Namtola Haticamp under Namtola Police Station in the District of Sivasagar, here in this case has been put to face the trial to answer the charge under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short the 'POCSO Act').
- 2. The fact as disclosed in the First Information Report (in short FIR) was that on 21.08.2013 the informant Sri Ranjit Shah, S/O Late Sankar Shah, resident of Namtola Haticamp under Namtola P.S. lodged an Ejahar before the O/C, Namtola P.S. alleging, inter alia, that prior

Contd....Page---2

Page----2

to seven/eight month of filing this Ejahar on 21.08.2013, accused Sankar Prasad Rana who is an inhabitant of Namtola Haticam committed rape on his niece Smti Pinki Shah, aged about 14 years in the house of accused who was working as a domestic help and the victim is carrying six months pregnancy. It is further alleged that about four years ago accused brought the victim Pinki Shah to his house in order to give shelter and also with a view to admit her in school since the father of the victim died during her childhood and at that time her mother was a mentally ill. Hence informant prayed to take necessary action against the accused person.

- 3. On receipt of the Ejahar, police registered Namtola P. S. Case No.47/2013 U/S 6 of POCSO Act, 2012 and investigated into the case. Accordingly Investigating Officer visited the place of occurrence, prepared the Sketch map, and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, sent the victim to the Civil Hospital for her medical examination and also forwarded the victim Pinki Shah to the court for recording her statement U/S 164 Cr.P.C. and on completion of investigation, submitted Charge-Sheet against the accused under Section 6 POCSO Act, 2012.
- 4. The accused Sankar Prasad Rana produced before this court for trial after furnishing copy to the accused person as the case is exclusively triable by the court of Special Judge.
- 5. On appearance of the accused person before this court, my learned predecessor after hearing both the sides formally framed the charge against the accused under Section 6 of POCSO Act, 2012. The particulars of the charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To bring home the charge, prosecution side has examined as many as seven witnesses including the Medical Officer Dr. Rehan Sheikh as P.W.1 and victim Smti Pinki Kumari Shah as P.W.2. Defence cross-examined the said P.Ws but adduced no evidence.
- 7. I have heard Mr. Anil Chandra Dutta, learned counsel for the accused and Mr. A. K. Bora, learned Public Prosecutor for the State.

Page—3

8. THE POINT FOR DETERMINATION IS -

Whether prior to 7/8 months of filing Ejahar, i.e. on 21.08.2013, accused committed aggravated penetrative sexual assault on the victim Pinki Kumari Shah who is below 12 years of age and thereby committed an offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 as alleged?

DECISION AND REASONS THEREOF

- 9. To arrive at a judicial decision, let the evidence on record be appreciated.
- 10. P.W.1 is Dr. Rehan Seikh who deposed that on 21.08.2013 he was working at Sonari Sub-Divisional Civil Hospital as Senior Medical & Health Officer. On that day, at about 4.30 P.M., on police requisition he examined Smti Pinki Shah, D/O Late Ashok Shah of Namtola Haticamp under in connection with Namtola P. S. Case No.47/2013. The victim was escorted and identified by woman Home Guard Rina Khanikar and his findings are as follows:

Identification marks- One black mole over right shoulder.

Brief history of the alleged sexual intercourse -

Sexual intercourse with a man (Sankar Pd. Rana) off and on since last 5 months. Menarche of the victim is 3 years. Her LMP is 24.02.2013.

Marital status - married.

General physical examination:

Built and nutrition – average. Weight 42 Kg.

Height – 4 feet 9 Inch. Teeth 7+7/7+7 = 28 Nos.

Development of axillary and pubic hair – developed.

Breast development – developed. Findings – engorged.

Mark of violence on the body – No injury could be detected.

Examination of genitalia -

Genitalia – developed.

Labia, majora and minora - normal.

Clitoris – normal. Fourchette – normal.

Hymen – old rupture.

Vagina – accommodate 2 fingers.

Discharge and stain – white discharge.

Injury – not detected.

Internal examination - Not done.

Laboratory investigations:

Vaginal smear – no spermatozoa seen. Examination was done on 22.08.2013 by Mr. Tileswar Baruah, Laboratory Tech.

<u>Pregnancy Test</u> – Urine for HCG test – positive.

Contd...page---4

Page—4

<u>Ultra-sonography</u> – report shows single live 29 weeks in vertex presentation. **Radiological examination:**

X-ray of left wrist AP, lateral view. Left elbow AP, lateral view, left iliac crest. The age of the subject is below 18 years and above 15 years. The name of the Radiologist is Dr. T. Borborah.

Opinion: On examination of Smti Pinky Shah P.W.1 opined that victim girl is pregnant of gestation 29 weeks and her age is above 15 years but below 18 years. Ext.1 is the medical examination report and Ext.1(1) is the signature of P.W.1. In cross-examination P.W.1 deposed that on the basis of the findings given by the Radiologist in the X-Ray report he has mentioned in his report (Ext.1) that the victim is above 15 years. He stated that he can not say if both the elbow joints fused and one wrist joint open then age of the patient shall be above 16 years. He denied defence suggestion that if one person having 28 teeth it can be said that he is above 16 years.

P.W.2 is the victim Pinki Kumari Shah who deposed that accused is known to her and since her childhood she has been working in the house of the accused who admitted her in school. In the year 2012 the occurrence took place, during which she developed love affair with one Sri Dinesh Sharma who was working in the garage of the accused Sankar Prasad Rana. P.W.2 further deposed that out of their physical relationship with said Dinesh Sharma she became pregnant and gave birth of a child. After being pregnant said Dinesh Sharma fled away to Bihar. Later on paternal uncle of P.W.2 lodged Ejahar against the accused, as a result of which police took P.W.2 to the Doctor where she was medically examined and her statement was also recorded in the court. Ext.2 is her statement where Ext.2(1), Ext.2(2), Ext.2(3) and Ext.2(4) are her signatures.

In cross-examination P.W.2 deposed that house of the accused is situated by the side of the road between Sonari and Mon District of Nagaland and in front of the house of the accused there are several shops of T.V., Mobile repairing etc. She further deposed that the wife of the accused, mother of the victim and the victim herself used to stay in the house of the accused. She further deposed that she also went to Bihar during that period and stayed in the house of her brother-in-law where she came to know regarding her pregnancy. Thereafter she returned from Bihar and stayed in the house of the accused. P.W.2 being the victim further deposed that informant Ranjit Shah is her paternal uncle and he used the victim for illegal gain of money from the accused Sankar Prasad Rana by lodging false Ejahar against the accused. She further deposed that at the time of occurrence her age was 17/18 years.

P.W.3 is Sri Ranjit Shah who deposed that accused is known to him and victim is his niece. About two years back (from the date of deposition) occurrence took place. The victim along with her insane mother used to stay as domestic help in the house of the accused. During her stay the victim became pregnant and one day when P.W.3 went to the house of the accused to meet the victim then he came to know that the accused and the victim Pinki Shah went to Bihar. Subsequently the accused surrendered in the Police Station. Prior to that P.W.3 lodged Ejahar informing the police that the victim became untraced. Ext.3 is the Ejahar where Ext.3(1) is the signature of P.W.3. P.W.3 further deposed that during stay in the Police Station accused told that he married the victim Pinki and at that time victim was 13 years old, as such P.W.3 lodged Ejahar. Presently victim has been staying in her mother's house.

In cross-examination P.W.3 deposed that he did not take the responsibility of insane mother of the victim. He denied defence suggestion that the victim did not go to Bihar along with the accused; rather she stayed in the house of her brother-in-law in Bihar. He further deposed that family of the accused is a joint family comprising son and daughter-in-law of the accused and there are many shops of T.V., Mobile repairing in and around the house of the accused. He further deposed that the victim never stayed with him and he does not know the date of birth of the victim. P.W.3 denied defence suggestion that the victim became pregnant from the side of one Dinesh Sharma and accused did not commit the alleged occurrence. P.W.3 denied defence suggestion that he has lodged false Ejahar against the accused with a view to get money illegally from the accused.

13. P.W.4 is Sri Ashok Kumar Shah who deposed that accused is known to him. About two years back (from the date of deposition) occurrence took place. He deposed that victim Pinki Shah was a maid servant in the house of accused Sankar Prasad Rana and at the time of occurrence P.W.4 came to know that the victim became pregnant, as a result they came to the house of the accused in search of the victim where they came to know that the victim and the accused had fled away to Bihar. Later on Ejahar was lodged and the accused surrendered in the Police Station.

In cross-examination P.W.4 deposed that the house of the victim is situated about half kilometre away from the house of P.W.4 and he does not know the date of birth of the victim. He further deposed that the victim went to Bihar prior to one month from the date of lodging Ejahar.

- 14. P.W.5 is Bijuli Pandit who deposed that accused and the victim are known to him. He deposed that one day the elder sister of the victim over phone reported P.W.5 that the victim gave birth of a child, as a result P.W.5 came to the Police Station and put signature in a paper. In cross-examination P.W.5 deposed that accused lives in his house along with his wife, son and daughter-in-law. He does not know the date of birth of the victim and also no knowledge regarding departure and arrival of the victim from Bihar.
- 15. P.W.6 is Monuhar Thakur who deposed that accused is known to him and at the time of occurrence victim was working in the house of accused. P.W.6 deposed that at the time of occurrence he came to know that victim Pinki Shah became untraced from the house of the accused, as a result P.W.6 along with informant Ranjit Shah, one Satyandra Tiwari, Ashok Shah, Nanda Thakur came to the house of the accused where they were informed by the wife of the accused that the victim was taken to Bihar by the accused and she will be given marriage there. The informant Ranjit Shah reported that victim became pregnant. After few days of the occurrence the accused and the victim surrendered before police and in the Police Station the accused told one woman that he would marry the victim and give her half of the property and victim became pregnant from his side.

In cross-examination P.W.6 deposed that the victim and her mother never stayed in the house of Ranjit Shah. He further deposed that he does not know since when the victim used to stay in the house of the accused and when she went to Bihar and also does not know when she returned from Bihar. P.W.6 denied defence suggestion that informant Ranjit Shah lodged false Ejahar with a view to grab the property of accused illegally.

P.W.7 is the Investigating Officer Sri Binod Chandra Dehingia who deposed that on 21.08.2013 when he was O/C of Namtola Police Station, on that day the informant Ranjit Shah lodged an Ejahar against the accused Sankar Prasad Rana and accordingly P.W.7 registered Namtola P.S. Case No.47/2013 U/S 5 (J) (ii) (N) POCSO Act and investigated into the case. Ext.3 is the Ejahar where Ext.3(2) is the signature of P.W.7 along withhis note. During investigation P.W.7 visited the place of occurrence, recorded the statements of the witnesses and prepared Sketch map which is Ext.4 where Ext.4(1) is the signature of P.W.7. During examination victim was medically examined and her statement was recorded in the court. Vide Ext.5 one school transfer certificate of the victim was seized where Ext.5 (1) is his signature. On

completion of investigation P.W.7 submitted Charge-Sheet against the accused U/S 6 of POCSO Act. Ext.6 is the Charge-Sheet where Ext.6(1) is the signature of P.W.7.

In cross-examination P.W.7 deposed that victim was brought to the Police Station from the house of the accused and he did not collect original school certificate or school record of the victim from the school of the victim. He also deposed that there is one garage in the house of the accused but he did not enquire who resides there.

- 17. Above are the evidence led by prosecution in support of its case.
- 18. To prove the charge of penetrative sexual assault, the prosecution is to prove that accused penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person, or he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person, or he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person, or he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person is said to commit penetrative sexual assault.
- In the instant case it is seen that P.W.3 Sri Ranjit Shah being the paternal uncle of the victim deposed that the accused took the victim to Bihar as such Ejahar was lodged. P.W.3 does not know the actual date of birth of the victim. P.W.4 and P.W.5 deposed nothing implicating the accused with the alleged occurrence. P.W.6 simply deposed that one woman reported him that accused confessed before her that he made the victim pregnant. But P.W.6 failed to say the name of said lady and prosecution not examined her to establish their case. IN contrary to that P.W.2 being the victim clearly deposed that she had love affair with one Dinesh Sharma, and she became pregnant from the side of Dinesh Sharma. Not only that the victim being the niece of P.W.3 clearly deposed that accused is not involved with the alleged occurrence; rather P.W.3

Page—8

with malafide intention of extorting money from the accused has falsely

implicated the accused with this case. From the evidence of the victim (P.W.2) it

is crystal clear that accused is not at all involved with the alleged occurrence

and prosecution miserably failed to prove its case against the accused beyond all

reasonable doubts.

20. On careful scrutiny of the entire evidence on record and in the

backdrop of foregoing discussions, I am of the view that the prosecution has

failed to prove its case under Section 6 of the Protection of Children from

Sexual Offences Act, 2012 against the accused person beyond all reasonable

doubts.

21. Accordingly I hold the accused not guilty and he is acquitted of the

charge of offence under Section 6 of the POCSO Act, 2012 and set at liberty

forthwith. Bail bond stands cancelled.

22. Judgment prepared, pronounced and delivered in the open court

under my hand & Seal of this court on this, 10th day of May, 2016 at Sivasagar.

(Sri S. Khound.) Special Judge,

<u>Sivasagar</u>

Dictated & Corrected by me

(Sri S. Khound.) Special Judge,

Sivasagar