IN THE COURT OF THE SPECIAL JUDGE, NAGAON. ASSAM

SPECIAL (POCSO)CASE NO. 15(N) OF 2018

PRESENT :

Smti. R. Kar,

Special Judge,

Nagaon

State of Assam

Complainant

-Versus -

Sahanur Ali @ Jahangir Ali..... Accused Person

ADVOCATES WHO APPEARED IN THIS CASE

For the Complainant

:Sri M.Neog,

Special Public Prosecutor.

For the accused

: Smti. Mallika Sarmah,

Legal Aid Counsel.

Date of evidence of PWs : 01-08-2018, 06-10-2018,

02-11-2018, 08-03-2019.

Date of Argument

: 04-06-2019

Date of Judgment

: 20-07-2019.

J U D G M E N T

1. The prosecution case as unfolded from the FIR is that on 10-01-2018, informant Newaj Ahmed lodged an FIR before the Nagaon Police Station alleging that Md. Shahnur Ali @ Jahangir was his tenant from 22-12-2017 and along with him a minor girl of aged about 10/12 years also stayed with him. So far his knowledge is concerned, Md. Shahnur Ali had two wives and at the time both the wives has abandoned him and went with some other persons. It is further alleged that on 02-01-2018 of Tuesday night at about 8.30 p.m., he heard the screaming of the said minor girl and as such he went to his tenant house and could see that the father was committing forceful rape on his daughter. He caught the accused red-handed and on asking the girl he came to know that Shahnur Ali, i.e., the father of victim earlier also committed forceful rape on her. The complainant informed the matter to the District Child Protection Officer and on 09-01-2018, based on his application Child line, Nagaon with the help of police of Haiborgaon Out Post the girl was rescued and simultaneously rapist father was arrested. The said girl has shared her grievances to the Police and Child line . Hence, the F.I.R.

Special Judge in

- 2. On basis of the said FIR the Officer-in-Charge of Nagaon P.S. registered Nagaon P.S. Case No.75/18 u/s 4 of POCSO Act/2012 and police started usual investigation thereon. Upon completion of the investigation police laid charge sheet U/s. 4 of POCSO Act against accused Md. Sahanur Ali @ Jahangir Ali.
- 3. On being produced the accused person was furnished with all the necessary copies as required U/S 207 of Cr.P.C. Subsequently, after hearing both sides and perusing relevant materials formal charge u/s 10 of the POCSO Act was framed against accused Md. Sahanur Ali @ Jahangir Ali and same was read over and explained to him to which he pleaded not guilty and claimed to be tried.

- **4.** During trial of the case, prosecution side examined 7 witnesses including the Medical Officer and the Investigating Officer. The accused person was examined u/s 313 Cr.P.C. Defense adopted plea of denial and examined none.
- **5.** I have heard argument advanced by both sides.

6. Point for decision:-

i) Whether on or about 02-01-2018 at about 8.30 p.m. the accused committed aggravated sexual assault on his 9 years old daughter, namely, 'X' and thereby committed an offence punishable u/s 10 of the POCSO Act?

Special Judge

7. Discussion , decision and reasons thereof :-

Before entering into the discussion, the gist of the prosecution evidence is laid down below:-

PW 1, Newaz Ahmed has deposed that he is the complainant of the case. He lodged the case against accused Shahnuz @ Jahangir. 'X' is the daughter of accused Shahnuz. Shahnuz Ali was his tenant.

The incident took place in the month of January in night at about 8.30 p.m. At the time of incident he was coming home from Masjid, then he heard screaming of 'X' from the house of accused situated behind his house and he went there and found the door closed. He opened the door and entered inside the house and put on the light and saw that accused/father was committing rape on his daughter. When he asked about the incident, accused told that he was wrong and promise not to repeat such act. PW 1 brought the girl to his house. On the next day when he enquired about the incident, 'X' told that earlier also in two/three occasions her father committed

rape on her. Then he communicated with the Child Line, Nagaon. On the next day of the incident, Shahnuz became disappeared from his house. Subsequently on 09-01-2018 Shahnuz Ali came to house and then he informed the Child line and Police. Thereafter Child line and police found the accused and the child in the house. Police enquired the incident from the girl and Shahnuz was apprehended and taken with them while the girl was taken by the Child line. Thereafter he filed the written ejahar. Ext. 1 is his ejahar and Ext.1(1) is his signature. Subsequently he came to know that police caused the medical examination of the said girl. Police also recorded his statement.

Special Judge in

PW 2, namely X deposed that she knows Newaz Ahmed. They were tenant of his house. Shahnuz Ali is her father. The incident took place at night in the month of January. At the time of incident she and her father were in the house. At night she went to sleep. Her father climbed up on her body and wanted to commit bad work. Then the tenant uncle (owner of their rented house) came to their house and on seeing to commit bad work, tenant uncle tried to assault her father but she asked the tenant uncle not to assault her father. Thereafter tenant uncle made her father understood and left their house. At night she stayed in her own house.

After 5/6 days later from the said incident police came there. Woman police also came and police took her father. She was taken by the child-line officials. Subsequently police caused her medical examination and also caused recorded her statement before Court. Ext.2 is her statement recorded before the court and Ext.2(1), 2(2) and 2(3) are his signatures.

PW 3, Md. Ashaduz Zaman has deposed that he knows the complainant Newaz Ahmed. After the incident he came to know accused Shahnuz and his daughter 'X'. The incident took place in the month of January. The incident occurred at about 8/8.30 p.m. On the next day of the incident, the complainant called him and other two

members of Shanti Committee and stated that on the previous night while he was coming home he heard bad sound in his rented house of Jahangir and he went there and banged opened the door and put on the light. He found the girl in nude condition and Jahangir laying over the girl and when he wanted to beat Jahangir, the daughter of Jahangir prevented to assault him.

After the incident was told to them they have decided to hand over the girl to Child line. The accused hide away. After few days, when the accused came to the house, they informed the police and the child line. Police took away the accused while the girl was taken by the child line. On the next day, Newaj Ahmed lodged the ejahar. Police recorded his statement.

Special Judge, in

PW 4, Suruj Moni Saikia has deposed that he knows the complainant Newaj Ahmed and he could recollect the victim. The incident took place in the current month of January. One day in the month of January Newaj Ahmed made a phone call to the toll free number of child line. When he received the phone call, then Newaj Ahmed told that few days back, at night, his tenant was found sleeping over his own daughter by removing her clothes and committed sexual assault on her. He further stated that on hearing some sound, Newaj Ahmed went towards the room of his tenant and by opening the door, he found the girl in nude condition and her father was lying over her. Newaj Ahmed did not alarm on that night and on the next he discussed the matter with the Shanti Committee and thereafter informed them over phone about the incident. Immediately they informed the incident to the District Child Protection Officer and as per his direction on 09-01-2018 they went to the house of victim and found the victim and her father. When they asked about the incident, the victim sobbingly told the incident. Police also went them. They took the girl with them while the police took the father of the victim. Police recorded his statement.

PW 5, Md. Mainuddin Halder has deposed that the incident took place in the month of January of the current year. On the next day morning of the incident, Newaj Ahmed met him on road and told that in the previous night at about 8.30 p.m. on hearing hue and cry from his tenant house, he went there and on opening the door he saw that the father was committing rape on his daughter. After hearing the incident, he and his associate Asaduz Zaman asked Newaj to inform the Child line. After about one week of the incident, the Child line officials along with police from Haiborgaon police out post came there. The Child line officials took the girl with them and the police took the father of the victim. On the next day, Newaj Ahmed lodged the ejahar. His name and address was written in the ejahar as witness. Ext.1 is the ejahar and Ext.1(2) is his signature.

Special Judge, Nagaon :: Assam

PW 6, Dr. Bhaswati Sharma has deposed that on 10-01-2018 he was posted at Nagaon Bhugeswari Phukanani Civil Hospital as Medical and & Health Officer-I, Nagaon and on that day, at about 3 p.m. she examined Smti. Sahnaz Begum in connection with Nagaon Sadar P.S.Case No.75/18 u/s 4 of POCSO Act in presence of LHV Runu Zamindar and escorted by WPC/610 Lakhyajyoti Bora and found the followings:-

Identification Mark.

- 1(a) Mole on right sole.
- (b) Mole on left side of face.

Height- 132 cms. Weight – 22 Kgs, Teeth – Upper/lower 12/12. Breasts- Not fully developed, Axillary Hair – present (sparsely), Hymen – present, Vaginal Injury- Not much (orifice is inflamed), Marks of violence – None. Clothings -Skirt top and sweater, LMP – Puberty not attain.

Smear examination vide Regd. No.6474/18 reported by Pathologist Dr. J.Hussain shows no spermatozoa seen.

X-ray examination of the right wrist, elbow and iliac crest No.: Not done.

- 1.Right wrist joints Nil
- 2.Right elbow joints Nil
- 3. Right iliac Crest Nil.

Opinions:

- 1. There is sign of recent sexual assault in the private parts of the child (vaginal orifice red and inflamed).
- 2. Age of the victim cannot be determined as X-ray was not done.
- 3. Mental condition of the victim seems normal.

Ext.3 is the medical report and Ext.3(1) is her signature.

Special Judge, Nagaon : A senin

PW 7, SI Siddheswar Boro has deposed that on 09-01-2018 he was posted as In-Charge of Police at Haiborgaon TOP and on that day, at about 7.40 p.m. a team of Child line appeared before the outpost and requested to rescue a girl from 2 No. Mullapatty which was sexually assaulted by her father. Accordingly GD.Entry No.206 dated 09-01-2018 was entered. Then he along with his staff including woman ASI, Smti. Bharati Bora went to the place of occurrence. Accordingly they rescued the girl and apprehended the accused from the rented house of Newaj Ahmed. Thereafter the girl was handed over to the child line. Ext.4 is the GD. Register book and Ext.4(1), 4(2) and 4(3) are the relevant GD. Entry in respect of 205, 206 and 207. Thereafter he drew a sketch map of the place of occurrence. Ext.5 is the sketch map and Ext.5(1) is his signature.

The FIR was filed by one Newaj Ahmed which was received on 10-01-2018 at about 12.30 p.m. The case was registered by the Officer-in-Charge of Nagaon P.S. and endorsed him to take up the investigation. The victim was medically examined and her statement u/s 164 Cr.P.C. was recorded. The accused was brought to the police station for interrogation on 09-01-2018 and subsequently

on 10-01-2018 he was arrested. Ext.6 is the arrest memo and Ext.6(1) is his designate. He also recorded the evidence of witnesses.

The Investigating Officer has collected the medical report of the victim. After completion of investigation, Investigating Officer has submitted charge-sheet against accused Sahanur Ali u/s 7 of the POCSO Act. Ext.7 is the charge-sheet and Ext.7(1) is his signature.

Mr. M.Neog, the learned Special Public Prosecutor 8. appearing for the State submitted that the evidence adduced by the prosecution witnesses, more particularly PW 1, PW 2 and PW 6 clearly establishes the case of the prosecution. Learned Special P.P. further argued that this is an unnatural act in civil society and as such law should be strict against such offence. He submitted that the victim being the minor daughter of the accused has been living with the accused lonely as her mother run away but the accused did not resist his carnal desire and materialized on the easy prey on the fate full night breaking the rule of society. The act was directly seen by the PW 1 and PW 2, the victim has admitted the fact. The other witnesses have supported the sexual act committed by the accused upon the victim and are the eye witnesses to its subsequence He further submitted that the discrepancy in the occurrence. evidence are in fact only minor inconsistencies which otherwise cannot be the basis for rejecting the credibility of the prosecution evidence. He thus submits that from perusal of the evidence led by the prosecution, it can be clearly seen that the prosecution have been able to bring home the guilt of the accused person and considering the heinous crime having committed by him the accused must be convicted and appropriate sentence be awarded.

9. The learned legal aid counsel Smti. Mallika Sarma on the other hand, refuting the argument of the learned Special P.P., submitted that the evidence of PW 1 having not been corroborated with PW 2 as such conviction of accused cannot be sustained. It is

Special Judge, Nagaon :: Assam

further argued that taking the absence of the accused in the house PW 1 tried to ill behave the victim and the accused person protested of such act, then PW 1 lodged a false case against the accused. She submits that the evidence of PW 2 does not lead the fact of committing bad act on her. She further submitted that non-informing the incident to anybody else except the wife on the eve of the incident by PW 1 also casts doubt in the evidence of PW 1. She further argued that the occurrence took place on 02-01-2018 while the doctor examined the victim on 10-01-2018 and detected no mark of violence on her. It is further argued that the doctor has opined finding of no sign of recent sexual assault in the private parts of the child. She further argued that there are lot of contradictions in the evidence of PW 1, PW 2, PW 3, PW 4 and PW 5. Thus it cannot be believed that the accused person has committed any bad act on the victim, who is after all a father and taking all care and maintenance daughter/victim. She further argued that when the eye witness is totally inconsistent with the medical evidence, there is no reason to believe that the evidence of ocular witness. Therefore, conviction of the accused under such circumstances is not sustainable.

Special Judge, Nagaon :: Assain

10. Now let us appreciate evidence on record.

From the evidence it can be seen that other than the victim(PW 2), the informant (PW 1) is the vital witness as he has claimed to have seen the incident. PW 3, PW 4 and PW 5 have corroborated the fact of the matter of reporting the incident to them by PW 1.

The victim(PW 2) in her evidence has stated that her father tried to commit the 'bad act' with her and then 'Malik Kaka' came and seeing this tried to assault her father but she told him not to do so. PW 2 has corroborated the statement of PW 1 that he saw the incident. PW 1 in his evidence has corroborated the allegations made in the FIR. PW 7 (I.O.) in his evidence although proved

contradictions as brought out by defence in respect of exact words deposed by the PW 1 in his examination-in-chief but at the same time he has stated that PW 1 stated before him that accused is committing some bad act with the victim. Thus it can be seen that defence has failed to prove the contradiction on materials point. Now defence in course of cross-examination of PW 1 has given the suggestion that he tried to molest the girl of the accused on several occasions during his absence in the house and as the accused knowing the matter protested as such he has filed the false case against him. PW 1 has denied this suggestion. Similar suggestion has been given to the victim (PW 2) and she has also denied the same. The accused in his statement u/s 313 Cr.P.C. has taken the plea that the informant wanted his daughter for domestic help and to take care of his little son but he refused as such the informant entered inside his room by breaking the door and by showing dao threatened him to tell that he has done the bad act with his daughter. Thus it can be seen that the defence has taken two different pleas in order to show his innocence.

Special Judge Nagaon :: Assain

Defence in course of cross-examination of the victim (PW 2) has failed to extract anything from her mouth so to establish their plea. Evidence of the victim (PW 2) appears to be very natural and no reason could be found why she should tell lie against her father. I do not find any reason to disbelieve her evidence. Evidence of PW 1 and PW 2 are corroborative and as such evidence of PW 1 (the informant) is also found trustworthy.

I have also considered the medical evidence of the Medical Officer (P.W.6).

Defence has failed to rebut the presumption u/s 29 of the POCSO, Act, 2012.

11. Now aggravated sexual assault has been defined u/s 9 of the Act. As per section 9(n). "whoever, being a relative of

the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child;"

In the instant case accused is the father of the victim and as such commission of offence as defined u/s 9(n) of the Act has been attracted. Considering the have arrived at the finding that prosecution has succeeded to bring home the charge against accused Sahanur Ali which is punisable u/s 10 of the POCSO Act beyond all reasonable doubt and accordingly he is convicted under the section.

Special Judge in Nagaon :: Assain

- 12. Considering the nature of offence and facts and circumstances of the case, I am not inclining to extend any benefit either under the provision of Probation of Offender Act or u/s 360 Cr.P.C.
- **13.** <u>Sentence hearing:</u> I have heard the accused person on the point of sentence. His statement on sentence hearing is recorded in separate sheet and kept with the case record. Accused person has prayed for showing leniency on sentence.
- **14. Sentence**: Considering all aspects, accused Sahanur Ali @ Jahangir Ali is sentenced to undergo Rigorous Imprisonment for 7 (seven) years and also to pay fine of Rs.5,000/- (Rupees Five thousand only) in default R.I. for another 3 (three) months for the offence punishable under Section 10 of the POCSO Act.

Period of detention already undergone be set off as per provision of Section 428 of Cr.P.C.

Issue imprisonment custody warrant accordingly.

Furnish copy of the judgment free of cost to the accused person.

Send a copy of the judgment to learned District Magistrate of Nagaon u/s 365 Cr.P.C.

Given under my hand and seal of this court, I have signed and delivered this Judgment on this 20^{th} day of July, 2019 at Nagaon.

(R SRaeia) Judge Nagaon :: Assam Special Judge,

Nagaon.

Dictated & corrected by me.

(Section) judge,

Special judge,

Nagaon.

Dictation taken & transcribed by

(Nipen Rajkhowa)

Wifen Rosthaua

Stenographer.

ANNEXURE

Prosecution Witnesses

1.	P.W.1		Newaz Ahmed
2.	P.W.2	-	Victim "X"
3.	P.W.3	_	Md. Ashaduz Zaman
4.	P.W.4	_	Suruj Moni Saikia
5.	P.W.5	_	Md. Mainuddin Halder
6.	P.W.6	_	Dr. Bhaswati Sharma.
7.	P.W.7	-	SI Siddheswar Boro

Prosecution Exhibits.

Defence Witness.

Nil

Defence Exhibit

Nil

