DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE, SIVASAGAR:

Ref.:- Spl. (P) Case No.13 of 2014

(Arising out of Charaipung P.S. Case No.4/2014)

U/S 6 of POCSO Act.

Present:- Sri S. Khound.

Special Judge, Sivasagar.

The State of Assam : Prosecution

- Vs -

Sri Sarat Gogoi : Accused

Appearance :-

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

For the accused : SK. Shamsher, Advocate,

Sibsagar Bar Association,

Sivasagar.

Dates of depositions : 24.09.2014, 13.11.2014, 22.01.2015

Date of argument : 20.03.2015, 31.03.2015.

Date of Judgment : 21.04.2015.

# JUDGMENT

- The accused Sri Sarat Gogoi, son of Late Mohendra Gogoi, resident of Lakily Gaon under Charaipung P. S. 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. Keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence, it would be appropriate on the part of the court not to indicate the name of the victim in the judgment. This court has chosen to describe her as 'X' in the judgment.

- The fact as disclosed in the First Information Report (in short FIR) was that on 06.05.2014, at about 4.30 P. M. Sri Bertho Tigga, S/O Late Pratarsh Tigga of Santipur Tea Estate, Line No.1, P. S. Charipung lodged an FIR before the O/C, Charaipung Police Station alleging that on that day, i.e. on 06.05.2014 accused Sarat Gogoi called his daughter 噌 to his residence on the pretext to receive guest and while his daughter came to his residence then accused Sarat Gogoi attempted to commit rape on her, but somehow victim 噌 managed to escape from the clutches of the accused and disclosed the matter before the people.
- 4. On receipt of the Ejahar, police registered Charaipung P. S. Case No.04/2014 U/S 6 of the POCSO Act, and investigated into the case. Accordingly Investigating Officer visited the place of occurrence, prepared the Sketch map of the place of occurrence and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, sent the victim 噌 to the Civil Hospital for her medical examination and also forwarded the victim 噌 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 of the Protection of Children from Sexual Offences Act, 2012.
- 5. On appearance of the accused person copy was furnished to the accused by the Court of learned Sub-Divisional Judicial Magistrate, Charaideo, Sonari and subsequently the case was committed to the court of the Hon'ble Sessions Judge, Sivasagar.
- 6. On appearance of the accused person before this court, this court after hearing both the sides formally framed charge against the accused person U/S 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 7. To bring home the charge, the prosecution has examined the victim 噌 as P.W.2 and also examined four other witnesses including M.O. Defence cross-examined the said P.Ws but adduced no evidence. The statement of the accused person is recorded U/S-313 of the Cr. P.C. Defence plea is of total denial.

### THE POINT FOR DETERMINATION IS

i8. Whether on 06.05.2014 accused committed sexual assault on the victim 噌 who is below 12 years and thereby committed an offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 ?

### **DECISION AND REASONS THEREOF**

59. To arrive at a judicial decision, let the evidence on record be appreciated.

910. P.W.1 Dr. Mintu Deb deposed that on 07.05.2014 he was working at Sonari Sub-Divisional Civil Hospital as Medical Officer. On that day, at about 1 P.M. on police requisition, he examined the victim 噌 age 12 years of Santipur Tea Estate, Line No.1 under Charaipung P. S. in connection with Charaipung P. S. Case No.04/2014 U/S 6 of the POCSO Act. The victim girl was accompanied by UBC/323 Jitumoni Gogoi and she was examined in presence of female attendant Dipali Tigga (aunty) Mridu Malaya Gogoi and on examination found as follows:

Identification marks one black mole under left eye.

## **General physical examination:**

General behaviour normal. Mental state normal.

Cloths are changed. Findings Nil.

Built and nutrition average. Weight 38 Kg.

Height 4 feet 8 Inches. Teeth 7+7/7+7.

Development of axillary and pubic hair absent.

Breast are not well developed and no marks of recent

violence is seen.

Marks of violence in the body - not seen.

### Examination of genitalia -

Genitalia not well developed. Pubic hair absent.

Clitoris normal.

Labia, majora and minora - normal.

Forchette normal. Hymen intact.

Vagina normal.

Injury No injury marks seen.

Discharge and stain absent.

**Internal examination :** Not done.

### **Laboratory examination:**

Vaginal smear examination - No spermatozoa seen.

**Pregnancy Test** - It is negative.

**Untra-sonography** report reveals non-pregnant,

normal uterus.

### Page-----4

# **Radiological examination:**

X-ray of left wrist and elbow joints and X-ray of left iliac crest - the impression is that the age of the subject is below 15 years.

Opinion: On examination of victim 噌 P.W.1 Doctor has opined that (i) her age is below 15 years, (ii) there was no recent mark of violence on victim 痴 body, (iii) no recent evidence of sexual assault during the time of examination. Ext.1 is the medical report and Ext.1(1) is his signature.

- P.W.2 is the victim 噌 who deposed that accused is known to her. About 6/7 11. months ago, from the date of her deposition, one day i.e. on the day of the occurrence the garden Chawkidar of Santipur Tea Estate sent the victim 噌 to the house of the accused Sarat Gogoi for domestic help. After her arrival the accused engaged her to sweep the floor of the house of the accused. Thereafter accused closed the front door of the house and offered Rs.100/- to her and dragged her to the bed. Then she gave a kick on person of the accused and she somehow managed to escape. She has further deposed that accused also caught hold of her waist and torn her wearing apparel. Thereafter she reported the occurrence to her mother and on being informed by the Garden Manager police came to the place of occurrence and took her to Doctor for her medical examination and her statement was also recorded in the court. Ext.2 is the statement of the victim 噌 wherein Ext.2(1) and Ext.2(2) are her signature. In cross-examination P.W.2 deposed that the accused has two children apart from his wife in his house. She denied defence suggestion that on the day of the occurrence she did not work properly in the house of the accused for which wife of the accused rebuked her, as a result she has deposed false evidence against the accused out of grudge. She further denied defence suggestion that she did not state before police that accused dragged her to the bed and also caught hold of her waist at the time of occurrence.
- 12. P.W.3 is Bertho Tigga deposed that accused is known to him. About 5/6 months ago the occurrence took place, as a result of which he lodged the Ejaha giving his thumb impression. P.W.3 further deposed that after the occurrence his victim daughter reported that she went to the house of the accused to work, but the accused dragged her to his bed. In cross-examination P.W.3 deposed that he does not know the name of the person who wrote the Ejahar. He also deposed that he did not state before police that at the time of occurrence accused dragged the victim 噌 to his bed.
- 13. P.W.4 is Jasinta Tigga who deposed that victim 噌 is her daughter. On the day of occurrence her daughter returned home from the Tea Garden on crying and reported that she was sent to the house of the accused for domestic help and at that time accused Sarat Gogoi pushed her down by closing the door of his house. In cross-examination P.W.4 deposed that she did not state before police that on the day of occurrence her victim daughter came on crying and reported that accused pushed her down.
- 14. P.W.5 is Sri Tuniram Neog, S.I. of police deposed that on 06-05-2014 when he was on duty as O/C of Charaipung Police Station, on that day he received an Ejahar from one Bertho Tigga and registered a case. Ext.3 is the Ejahar and Ext.3(1) is his signature. During investigation he visited the place of occurrence, prepared Sketch map which is Ext.4 wherein Ext.4(1) is his signature. He further deposed that the victim was medically examined by the Doctor and her statement was also recorded in the Court. During investigation he seized one wearing apparel

of the victim vide Ext.5 which is a seizure list wherein Ext.5(1) is his signature. On completion of investigation P.W.5 submitted Charge-Sheet which is Ext.6 wherein Ext.6(1) is his signature. In cross-examination P.W.5 deposed that the victim 噌 did not state before him that at the time of occurrence her wearing apparel was torn. P.W.5 further stated that during investigation victim stated before him that at the time of occurrence the accused did not misbehave her. He denied defence suggestion that case was not properly investigated.

- 15. To prove the charge of sexual assault the prosecution is to prove that accused with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- 16. From the evidence on record it transpires that the victim nowhere stated regarding sexual intent of the accused at the time of alleged occurrence; rather she simply stated that at the time of occurrence accused dragged and pushed her down on the bed. Moreover there is also no mention regarding touching of vagina, penis, anus or breast of the victim or make her to touch such parts of the accused with sexual intent. The victim herself deposed that she gave a kick on person of the accused and thereafter accused caught hold of her waist, as a result her wearing apparel was torn. If for the sake of argument that part of evidence of the victim is relied upon even then it does not indicate the sexual intent of the accused as because the victim gave a kick on person of accused as a result of which accused caught hold of the victim by her waist. There is also no circumstantial evidence available on record forming a chain pointing towards the guilt of the accused as alleged. There is no any eye witness of the alleged occurrence. Apart from that the Investigating Officer during cross-examination clearly stated that during investigation the victim 噌 stated before him that at the time of occurrence accused did not misbehave her.
- 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 8 of the Protection of Children from Sexual Offences Act, 2012 against the accused person beyond all reasonable doubts.

# Page---6

- 18. Accordingly I hold that the accused is not guilty and he is acquitted of the charge of offence under Section 8 of the Protection of Children from Sexual Offences Act,2012 and set him at liberty forthwith. His bail bond stands cancelled.
- 19. Judgment prepared, pronounced and delivered in the open Court under my hand and seal of this Court on this the, 21<sup>st</sup> day of April 2015 at Sivasagar.

( Sri S. Khound. ) Sessions Judge, <u>Sivasagar</u>

Dictated & Corrected by me

( Sri S. Khound. ) Sessions Judge, Sivasagar