

**IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI**

**Special (POCSO) Case No. 07/2017.**

(Under Section 4 of POCSO Act, 2012)

**State of Assam**

*Versus*

**Rajib Sen** ..... Accused.

**PRESENT :- Shri D. Bhattacharjee, AJS.**  
**Special Judge, Hailakandi.**

**Appearance and particulars :-**

For the State : - Sri U.K. Das, Ld. Public Prosecutor.

For the accused person : - Sri R.A. Laskar, Ld. Advocate.

Dates of recording evidence of PWs. :- 15.06.2018, 29.06.2018, 04.08.2018,  
29.09.2018, 16.02.2019, 25.04.2019,  
31.05.2019, 02.08.2019 & 04.09.2019

Date of recording statement u/s 313, CrPC :- 24.09.2019.

Date of Argument : - 22.01.2020.

Date of Judgment : - 06.02.2020.

**JUDGMENT**

1. The prosecution case, in brief, is that on 22.05.2017 one Nilkanta Das @ Pintu lodged an FIR with the O/C, Hailakandi Police Station alleging that the accused is his neighbour and from last one month, his minor daughter

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(name is withheld and hereinafter she is referred to as 'victim'), aged about 11 years was staying in the house of accused. On 16.5.2017 at night while the wife of accused was sleeping, the accused committed bad acts on his daughter and when his daughter raised hue and cry, the wife of accused woke up and by gagging the mouth of his daughter, asked her not to raise any hue and cry. On the next day, his daughter returned her house from the house of accused and narrated the incident to her mother i.e. the wife of the informant. The informant then asked the accused about the incident, to which the accused told him not to disclose the same to anybody as he would settle the same. In the meantime, the abdominal pain of the victim was aggravated and as such, having found no alternative, he filed the case.

**2.** On receipt of the FIR, Hailakandi PS Case No. 283/2017 was registered under Sec. 120(B) of the IPC read with Sec. 4 of the POCSO Act, 2012.

**3.** During investigation, police got the victim medically examined, also got her statement recorded by Magistrate under Sec. 164, CrPC, recorded statements of other witnesses under Sec. 161, CrPC, seized one red color panty and one orange color clothe having blood stain, arrested the accused person Rajib Sen and forwarded him to the court. After completion of investigation, having found sufficient materials against the accused person, police submitted charge sheet against him under Sec. 4 of the POCSO Act, 2012.

**4.** After production of accused, having heard the Ld. Public Prosecutor and the Ld. Defence Counsel and on perusal of materials available on record, sufficient grounds have been found presuming that the accused person has committed the offence and accordingly, he has been charged under Sec. 4 of POCSO Act, 2012. The charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

**5.** The prosecution, in order to prove its case, examined all together 12 PWs including the Medical Officer and the Investigating Officer. The

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defence plea is of total denial. The accused person was examined under Sec. 313, CrPC wherein he denied all such incriminating materials brought in evidence against him by the prosecution witnesses and stated that his wife resides in his home alongwith his little baby and he sleeps in his shop at Hailakandi during night and as such, to take care of his baby, he brought the victim to his house, on the relevant night his wife assaulted the victim and out of that grudge, the instant case has been filed against him falsely. Further, he has pleaded innocence. The defence declined to adduce evidence.

6. Heard arguments of the Ld. Public Prosecutor and the Ld. Defence counsel.

**POINT FOR DETERMINATION :-**

Whether the accused person on 16.05.2017 in the night at Ward No. 14, Hailakandi Town committed penetrative sexual assault on the victim, aged 11 years, daughter of the informant and thereby committed an offence punishable under Section 4 of POCSO Act?

**DISCUSSION, DECISION AND REASONS THEREOF:-**

7. The PW. 1, Krishnamoni Dutta, a woman police constable, deposed that on the relevant night as per instruction of O/c, she alongwith other police personnel went to the house of the victim and brought the victim with them and took her to the Civil Hospital, Hailakandi for medical examination. She has further stated that in the police station, the blood stained panty and one piece of cloth were removed from the private part of the victim and were seized in her presence by the Investigating Officer vide Ext. 1, seizure list.

In cross examination, she has stated that in a separate room in the police station, the victim put off her panty and cloth and handed over it to her. On her arrival, she found many people gathered outside the house of the victim.

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**8.** The PW. 2, the victim deposed that the accused is her neighbour. On the relevant day, the accused Rajib took her to his house saying that he would give some food to her and accordingly, she went there with the accused but thereafter, the accused did not allow her to return home. At night when her parents came to take her, the accused abused them and told them that he would not allow her to go. The accused threatened her parents that if they take the victim, he would set fire in their house. Thereafter, at night the accused made her sleep in a bed alongwith his wife and child. She went asleep. At about 12 midnight, the accused Rajib put off her panty and put off his pant too and inserted his penis into her vagina. In the morning, she left the house of accused and disclosed the same to her parents. Thereafter, her father filed the case. Police came and took her to the hospital. Her statement under Sec. 164, CrPC was recorded. She has further stated that due to the incident, she sustained injury in her private parts and she became pregnant. She was referred to Silchar and her pregnancy was aborted. Police seized her panty and frock.

In cross examination, she has stated that about one year before the incident, she alongwith her parents used to reside at Shanibari, Hailakandi town in the house of one Sital, on rent. At the time of incident, the house in which they were residing, was given to them by Sital. Sital used to reside at village Aynarkhal at the relevant time of occurrence and he frequently used to visit her house. There are houses of other people near to her house and amongst them, she knows one Nitai and his family members. She has further stated that sometimes Sital used to stay in her house at night. In absence of her father, Sital used to visit her house. Jharna Das is her step mother. She does not know the whereabouts of her mother, even she has forgotten her mother. She was brought up in the house of her maternal grandmother at village Tempur. The accused Rajib has got a grocery shop at the junction point of the lane of her house. There was quarrel of Sadhu, Rajib and others of her neighbouring people with Sital and Sital used to visit her

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house. Since after the incident, Sital stopped visiting her house. Her mother instructed her to adduce evidence in the same manner. She has further stated that before one month of the incident with the accused Rajib, Sital also did sexual intercourse with her in her house. When Sital arrived, her mother left home to fetch water keeping Sital in her house. When her mother returned home, she informed the evil acts of Sital, which she also informed to her father. To abort the pregnancy, one Chandan of her lane had given one tablet to her in presence of her parents, which she consumed and thereafter, bleeding was started and ultimately, she was taken to Hailakandi Civil Hospital and then, to Silchar. She has further stated that when she was brought to the court for making her statement under Sec. 164, CrPC, her parents were with her and she made the statement on being tutored by her parents. Lastly, she has stated that due to the above evidence adduced by her, she may be beaten up by her mother.

**9.** The PW-3, Nilkanta Das, the informant of the case deposed that on 16.05.2017 in the evening when he returned home from his work, he did not find his daughter viz. the victim in the house and on being asked, his wife replied that the victim went to the house of accused. Thereafter, at night, he and his wife went to the house of accused and then the accused rebuked them and also chased them. They returned home back. In the next morning, he again went to the house of accused and asked him to hand over his daughter to him and at that time also, the accused rebuked him. Thereafter, at about 1 P.M. his daughter came to his house and told him and his wife that on the previous night, the accused committed bad acts with her by gagging her mouth. His wife reported him that there was profuse bleeding from the private parts of the victim. He also was the blood. He immediately shifted the victim to the Civil Hospital, Hailakandi and thereafter he filed the case on 22.05.2017 vide Ext.-3, FIR. Doctor advised him to take the victim to Silchar. After 3 days he took the victim to his house. He is unable to recall if police seized anything in connection with the case.

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In cross examination, he has stated that he went to the house of one Chandan of his neighbourhood and informed that the accused denied to hand over his daughter to him. The distance between his house and Hailakandi Police Station is about 1 kilometer and he did not inform the police about the occurrence on 16.05.2017. On the next day of the incident, he went to his place of work as usual and in the evening, he returned home and then he found his daughter in the house. When he noticed the profuse bleeding, he filed the case. He has further stated that Shital used to visit his house in his absence.

**10.** The PW-4, Debasish Upadya has deposed that in the year 2017, one day Chandan Das informed him that the wife of accused assaulted the victim and accordingly, he and Chandan Das went to the house of informant and saw the cheek of the victim swollen up. He asked the wife of accused as to why she assaulted the victim, in reply, she has stated that she took the victim to her house for taking care of her baby but the victim did not discharge the duty and as such, she assaulted her. He asked the accused to make necessary arrangement for her treatment. When he was taken by police, he came to know that a criminal case was filed against the accused alleging that the accused committed rape on the victim and there was bleeding per vagina.

**11.** The PW-5, Jharna Das, the mother of the victim has deposed that the accused took the victim to his house at about 1:30 P.M. saying that his wife has cooked something for her. After sometime, she and her husband went to the house of accused to bring their daughter but the accused did not allow her to come with them rather the accused scolded them. Thereafter, he returned home. She has further stated that the accused threatened them that if they talk any more, he would set fire in their house. In the next morning, her daughter returned home and reported them that the accused Rajib did bad acts with her and thereafter, they filed the case. She has further stated that one Chandan Das of her neighbourhood administered one tablet to her daughter to stop the bleeding.

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In cross examination, she has stated that Shital sold the land to them on which they are residing. Shital never came to her house. Shital never did any bad acts with her daughter. At the relevant time, her daughter was one month pregnant and said Chandan administered the tablet to abort the pregnancy. Due to profuse bleeding, they took the victim to Civil Hospital, Hailakandi but the doctor referred her to SMCH, Silchar.

**12.** The PW-6, Chandan Das deposed that about one year back, one day the wife of informant came to him and reported that the wife of accused assaulted the victim. The victim was also brought before him and he saw the mark of assault at the cheek of the victim.

**13.** The PW-7, Tapan Dutta deposed that in one morning he saw, the mother of the victim came to the house of accused and asked him to hand over her daughter to her. The victim was working in the house of accused. He also heard that the victim was assaulted in the house of accused Rajib.

In cross examination, he has stated that the wife of accused treats the victim as her daughter. He never saw and heard that the victim was assaulted by the accused or his wife.

**14.** The PW-8, Nitai Acharjee, a neighbour of both accused and informant has deposed that in a morning at about 7 A.M. he saw the mother of the victim came to the house of accused where the victim was working at the relevant time and asked the wife of accused as to why she assaulted the victim. Thereafter, the wife of accused had given all the wearing clothes and belongings of the victim to her mother and also handed over the victim.

In cross examination, he has stated that he never saw the accused or his wife assaulting the victim.

**15.** The PW-9, Dr. R. Begum has deposed that on 23.05.2017 she

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examined the victim at S.K. Roy Civil Hospital, Hailakandi and found no evidence of recent intercourse, no external injury on the body except posterior wall vaginal injury. Vaginal bleeding was found present. Ext.-4 is the medical report. She advised the victim to get her age determined from SMCH, Silchar.

In cross examination, she has stated that in the report, she has written that she found suspected posterior wall vaginal injury. In the report, she also mentioned that the victim refused to undergo vaginal examination test. She has further stated that such type of vaginal bleeding may be caused due to forceful abortion by using medicine or due to injury.

**16.** The PW-10, Dr. Monalisa Dev deposed that on 23.05.2017 she examined the victim at SMCH, Silchar and found the victim of the age above 14 years and below 16 years. She has further stated that on the date of examination, no evidence of recent sexual penetration has been detected. Injury marks not detected on her person except for old hymeneal tear as on date of examination. Ext.-7 is the medical report.

**17.** The PW-11, S.I., Nirmal Kanti Dey deposed that he submitted charge sheet against the accused under Section 4 of POCSO Act vide Ext.-8.

**18.** The PW-12, S.I. Sabir Ali, the Investigating Officer has deposed that on 22.05.2017 the Officer-in-charge got an information to the effect that one minor girl was being tortured in the house of one Rajib Sen and accordingly, G.D. Entry No.692 dated 22.05.2017 was made and he was instructed to proceed to the place of occurrence. He along with women constable (PW-1) and other staff went to the house of Rajib Sen and they came to know that the victim is in the house of her mother situated nearby the house of accused. They went to the house of victim and found her lying on the bed and was crying. He instructed the women constable to check the victim physically and she reported him that there was vaginal bleeding. In the meantime, the Officer-in-charge arrived and shifted the

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victim to Civil Hospital, Hailakandi. He seized the undergarments of the victim at hospital vide Ext.-1, seizure list. On the same day, father of the victim lodged the FIR and the victim was admitted in the hospital. They apprehended the wife of accused and thus, the accused surrendered before police. The accused denied the allegation. On the next day, the victim was referred to SMCH, Silchar. On 02.06.2017 after being released from hospital, the victim appeared in the police station along with her mother and then he forwarded the victim for recording her statement under Section 164 of Cr.P.C.

In cross examination, he has stated that the delay of filing the FIR was not explained. The PW-3 did not state before him that on 16.05.2017 in the evening, he returned home from his work place and asked his wife about his daughter viz. the victim, his wife replied that their daughter went to the house of accused and in the night, he and his wife went to the house of accused searching their daughter, then the accused rebuked them and also chased them, thereafter, they returned back to their home and in the next morning, he again went to the house of accused and asked him to hand over his daughter and at that time also, the accused rebuked him. The PW-3 did not state before him that his wife reported him that there was huge bleeding from the private part of the victim and he saw the blood but the PW-3 stated before him that the victim told him about the bleeding. The PW-3 did not state before him that the accused gagged the mouth of the victim while was doing the bad act with her. The PW-1 did not state before him that in the interrogation room of the police station, the victim put off her wearing clothes and handed over the same to the PW-1. He recorded the statement of PW-1 on 22.05.2017. He did not record the statement of Sital Das.

- 19.** In the instant case, it is appeared from the evidence on record that the entire case rests upon the evidence of child i.e. the PW. 2. The proposition of law is settled that by a catena of decisions that there is no rule for seeking corroboration of the testimony of the child witness but as a matter of prudence, the

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court should look for corroboration because the child witness is prone to tutoring.

**20.** The victim deposed that on the relevant day, the accused took her to his house saying that he would give some food to her but the accused did not allow her to return home and at night when her parents (PWs. 3 and 5) came to take her, the accused abused them and told them that he would not allow her to go, on the same night at about 12 midnight, while she was sleeping with the wife and child of accused, the accused put off her pant and inserted his penis into her vagina and in the next morning, she left the house of accused and disclosed the same to her parents and as a result of the incident, she sustained injury in her private parts and became pregnant. While the victim was cross examined, she has introduced a new story stating that one Sital did sexual intercourse with her in her house about one month prior to the occurrence and it was allowed by her mother. She has further stated that when she was taken to the court for recording her statement under Sec. 164, CrPC her parents were with her and she made the statement on being tutored by her parents. She has further stated that she deposed in the case in the same manner as instructed by her mother. This being the position, it is very hard to believe blindly the evidence of victim and therefore, this Court must look for corroboration.

**21.** The victim (PW.2) stated that on the relevant day, she was taken by the accused to his house for giving some food and in the night, the incident occurred and in the next morning, she returned home and disclosed her parents about the incident. The PW. 3, the father of the victim, stated that in the next morning, he went to the house of accused and asked him to hand over his daughter to him but the accused rebuked him, this evidence of PW. 3 shows the inconsistency as regards the time of coming of the victim from the house of accused after the occurrence.

**22.** The PW. 3 has further stated that on the next day of the

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incident at about 1 PM, the victim came from the house of accused and reported him and his wife about the occurrence of the previous night but most surprisingly, while he was cross examined, has stated that on the next day of the incident, he went to his place of work as usual and in the evening, when he returned home, he found his daughter in the house and then, he came to know about the occurrence. The PW. 5, the mother of the victim, has stated that in the next morning, her daughter came from the house of accused and reported her about the occurrence. From the above evidence of PWs. 2, 3 and 5, it is appeared that they are very much inconsistent in stating the time of return of the victim from the house of accused as well as the time of getting knowledge of the occurrence from the victim.

**23.** According to the victim and her mother, the victim became pregnant as a result of the bad acts committed upon her by the accused. The Ext. 3, FIR reveals that the incident occurred on 16.05.2017 but the PW. 5, the mother of the victim while was cross examined, very categorically stated that at the relevant time of occurrence, the victim was pregnant for one month. The victim (PW.2) during cross examination stated that to abort the pregnancy, one Chandan gave her one tablet in presence of her parents and when she consumed the same, bleeding was started. The PW. 5 also stated that to abort the pregnancy, Chandan gave one tablet. The evidence of PW. 1, the woman police constable, and the evidence of PW. 9, Dr. R. Begum disclose that there was vaginal bleeding found in the victim. So, what has been appeared from above is that before one month of the incident, the victim became pregnant and certainly, it was not because of the accused and the bleeding which was detected, was caused to abort the pregnancy conceived before one month of the occurrence and it was done by administering medicine and therefore, the accused has got no involvement in respect of the bleeding of the victim. The medical evidence shows that the PW. 9, Dr. R. Begum, who examined the victim on 23.05.2017 at S.K. Roy Civil Hospital, Hailakandi and found one posterior wall vaginal injury and on the same day, the victim was examined by Dr.

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Monalisa Dev (PW.10) at SMCH, Silchar on being referred by Dr. R. Begum, PW. 9 but the said PW. 10 found no injury on the private parts of the victim except old tear. Therefore, it is difficult to rely on the findings of PW. 9 as regards having of posterior wall vaginal injury.

**24.** The Ext. 3, FIR reveals that the occurrence took place on 16.05.2017 and police was informed on 22.5.2017 i.e. after six days of the occurrence. The PW. 3 has admitted in his cross examination that the Hailakandi Police station is situated at a distance of around 1 KM from his house and here, the question does arise as to why there was 6 day delay in informing the police and the answer is very much available in the cross examination of PW. 3. According to PW. 3, when he noticed the profuse bleeding on the victim, he filed the case and this statement of PW. 3 makes the entire prosecution case a doubtful one. In the backdrop of above discussed evidence, it is discernible that the victim was pregnant and to abort the pregnancy, medicine administered to her and when there was profuse bleeding, they filed the case and in this context, another question does arise as to why they filed the case implicating the accused person. The PWs. 4, 6, 7 and 8 stated that the victim was staying in the house of accused for taking care of his baby and on the relevant day, the wife of accused assaulted the victim and the mark of assault had been seen by the PWs. 4 and 6 at the cheek of the victim and regarding the same, there was quarrel between the wife of the informant and the wife of accused and the said assault and quarrel prompted the informant side to implicate the accused in the case. Further, the victim while was cross examined has stated that Sital had to stop visiting her house due to accused Rajib and one Sadhu and others of her neighbouring people.

**25.** In view of above discussion of evidence, this Court finds it difficult to rely upon the testimony of the PW. 2, the victim, moreover the evidence of PWs 2, 3 and 5 has been found to be highly inconsistent and contradictory and it would be highly unsafe to rely upon such type of weak evidence. Accordingly, this

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Court comes to the conclusion that the prosecution failed to prove its case against the accused Rajib Sen beyond all reasonable doubt.

**26.** *The accused Rajib Sen is acquitted of the offence charged under Section 4 of POCSO Act. Set him at liberty forthwith.*

**27.** The bail bond of accused will remain in force for further period of six months.

**28.** Destroy the seized articles as per law.

**29.** The Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this Court on this the 6<sup>th</sup> day of February, 2020 at Hailakandi.

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Special Judge,  
Hailakandi.  
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Dictated and corrected by me:

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Special Judge, Hailakandi.

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Dictation is taken and transcribed by Baharul Islam Choudhury,  
Stenographer Grade-I.

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**Appendix :-**

**Oral Evidences :-**

- PW-1, Krishnamoni Dutta.
- PW-2, Victim.
- PW-3, Nilkanta Das.
- PW-4, Debasish Upadya.
- PW-5, Jharna Das.
- PW-6, Chandan Das.
- PW-7, Tapan Dutta.
- PW-8, Nitai Acharjee.
- PW-9, Dr. R. Begum.
- PW-10, Dr. Monalisa Dev.
- PW-11, Nirmal Kanti Dey.
- PW-12, Sabir Ali.

**Documentary Evidences :-**

- Ext.-1, Seizure list.
- Ext.-2, Statement of victim U/S 164 Cr.P.C.
- Ext.-3, FIR.
- Ext.-4, Medial report.
- Ext.-5, Laboratory report.
- Ext.-6, X-ray report.
- Ext.-7, Medical report.
- Ext.-8, Charge sheet.
- Ext.-9, Extract copy of G.D. Entry.
- Ext.-10, FIR Form.
- Ext.-11, Sketch map of the place of occurrence.

**Defence declined to adduce evidence.**

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