IN THE COURT OF SESSIONS JUDGE ...CACHAR.

SPI POCSO CASE NO 14/15

(U/S 6 POCSO Act.2012.)

Present:-Shri K. Choudhury, LL.M.,

Sessions Judge,

Cachar, Silchar.

State of AssamComplainant.
-Versus-
Subhas Nayek
S/o Late Manu Nayek
Dolu Moynagarh
PS Borkhola
Cachar
Charge framed on:
P.Ws.examinedon:24/8/15,8/9/15,19/10/15
Statement of accused recorded under section 313 Cr.P.C:19/11/15
Argument heard on:
Judgment pronounced and delivered on:23/11/15
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Counsel Appeared:
Advocate for the prosecution:
Advocate for the accused:

JUDGMENT

1. Prosecution as reveals from the FIR is that accused is the closed door neighbour of the complainant. Four years aged daughter of the complainant here in below called as victim—used to call the accused as uncle (Kaku). The victim—used to visit the house of the

accused. On 4/6/15 at about 3-30 p.m. the accused called the victim to his house. Taking the advantage of absence of any inmates in the house the accused bolted the door and forcibly applied—oil on her private part and when attempted to commit rape on her she started cry—and after that—the accused opened the door—and—allowed the victim to go out—and after sometimes when the mother of the victim for bathing of the victim was rubbing oil—on the body of the victim the entire act of the accused was disclosed by the victim. The matter was then disclosed to the neighbouring elderly people including members of VDP—Accordingly—FIR was lodged which was registered—as Borkhola PS case No. 179/15 u/s 342 IPC—r/w section 8 of the POCSO Act.—During investigation the victim was medically examined. She also gave statements before the Magistrate.

- 2. On completion of investigation the I/O submitted charge sheet against the accused person u/s 342 IPC r/w section 8 of POCSO Act 2012. On production of the accused the ld. J.M. 1st class after furnishing copies of all the necessary police papers committed the offence. After hearing both sides and perusal of the materials on the record I framed formal charges against the accused U/S. 6 of POCSO ACT 2012. The charges were read over and explained to which he pleaded not guilty. Hence, trial began.
- 3. Prosecution examined as many as seven witnesses including the M.O. and the I/O. The defence pleas are of total denial.
- 4. During examination of accused u/s 313 CrPC the accused denying all the accusations pleaded as innocent,

5. Point for determination is:

(i) Whether, under the facts and circumstances of this case, the committed aggravated form of sexual assault on the person of the victim punishable Sec 6 of POCSO ACT 2012?

- 6. To decide the above point I have heard the ld. counsel of both sides. Perused the evidence on the record. Findings and decisions are given below.
- 7. PW.1 is the complainant, the father of the victim. He narrating the FIR deposed that on the date of occurrence at about 4 / 5 p.m. when he returned home from work, his wife reported that while his wife was rubbing oil to the victim before providing bath it was reported by the victim that she was getting pain at her genitals. On query the victim disclosed that the accused on that afternoon at about 3 p.m. took her to his house and slept on her. The victim further reported that the accused removing her clothes committed rape on her. It is further deposed that at the time of providing bath to victim sign of blood was noticed at the genital area of the victim. The victim also accordingly reported. To him. Ext.1 is the FIR. Police seized the undergarments of the victim vide Ext.2.
- 8. PW.2, the mother of the victim deposed that while she was taking bath at about 3-30 p.m. the victim went to the house of the accused and subsequently on call both the victim and the accused came, and while she was making ready the victim for bath by rubbing oil it was told by the victim for not touching her private part. On query the victim reported that the accused rode on her after removing her penty . It is further reported that the accused removing his pent rode on her and the accused asked the victim not to disclose d the matter .
- 9. Pw.3 is the victim. She deposed in camera. She deposed that accused rode on her in his house. She felt burning on her private part. Blood came out from her private part.
- 10. PW.4 is the lady doctor who examined the victim. According to

her the victim was aged about three years on the day of examination dtd. 5/6/15. She found hymen of the victim as reddened, tendered having a tear at 11 O'clock position. She recorded the history as narrated by the victim and her parents to the effect that on 4/6/15 at around 3 p.m. the accused took the victim to his house and applied oil on her body and removed her penty and did sexual intercourse with her.

- 11. PW.5 Sri Rajesh Bhumij deposed as a reported witness and according to him on the date of occurrence it was reported that the accused raped the victim.
- 12. PW.6- Jhontu Bhumij also deposed accordingly.
- 13. PW.7 is the IO who deposed that on 5/6/15 i,e,one day after the alleged occurrence O/c of the Borkhola PS receiving FIR the Ext.1 entrusted him to investigate the case. During the investigation he visited the PO, drew up sketch map of the PO. The victim examined by the doctor of SMCH. Statement of the victim was also recorded by the Magistrate. He seized one Jangia produced by the mother of the victim vide Ext.2. He submitted the charge sheet Ext.5..M.Ext.1 is the seized Jangia. In the cross examination, it is stated that the seized penty was washed after the incident and no blood or any other stain was found in it. Some omissions with regard to the reporting by the victim to the effect that PW.1 did not state before the IO about the report of the alleged incident by wife and daughter including notice of sign of blood by his wife. It is seen from the omission as confirmed by the IO that PW.2 also did not elucidated the incident before the IO in detail but it is seen that with regard to the substance of the allegation there is no contradiction.
- 14. During argument ld. PP has submitted that evidence with regard to the sexual assault as deposed by the victim is fully corroborated by her parents being PW.1 and PW.2 and there is no

contradiction, rather corroborated by the medical evidence and there is nothing in the evidence to impeach the trustworthiness of the witnesses. Further submission is that there is no reason to disbelieve the evidence of the victim who deposed to have sustained injury on her vagina supported by medical evidence;

- 15. On the contrary ld. defence counsel submitted that out of enmity as disclosed in 313 Cr.P.C. statement to the effect that there was a guarrel in between the accused and brother of the complainant and the accused has been falsely implicated. The above contention has got no force at all specially for the reason that accused had a good relation with the family of the victim and also with the victim as brought in the cross examination of PW-3 the victim complainant. The complainant categorically in the cross examination stated that he had no enmity with the accused and denied the suggestion that he has strain relation with the accused prior to the Therefor no good reason is found to disbelieve the occurrence. testimony of the victim supported by other witnesses and it can be relied upon in its face value.
- 16. The cogent and corroborative evidence supported by medical evidence shows that there had been penetrative sexual assault committed on the victim by the accused. It is an established rule that slightest penetration is enough for bringing home the offence u/s 4 of the POCSO,ACT. In the instant case the charge has been framed u/s 6 Of the Protection of Children from Sexual Offences Act (POCSO Act) which relates to aggravated penetrative sexual assault. But the prosecution side failed to adduce cogent evidence to establish that the accused was in a position of trust or authority over the child. There is some evidence that the victim being the close door neighbour of the accused off and on visited the house of the accused and called the accused as Uncle but this evidence is not sufficient to establish that the accused had got authority over the child. Under such premises, the established act of the accused, under the facts and

circumstances of the case, attracts the offence U/s 4 of the Act which is lesser offence of similar nature.

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- 17.. In view of the entire discussions of the evidence on record, contentions it is held that prosecution has been able to prove its case beyond all reasonable doubts u/s section 4 of POCSO Act. So, accused is held guilty and convicted accordingly.
- 18. Heard the accused on the question of sentence. According to him he is to maintain his ailing widow mother and there is none in his family to look after her and thus prayed for leniency. He has stated his age as 18. It is seen that he has also stated his age as 18 in his statement recorded u/s 313 Cr.P.C. Ld. defence counsel by petition No. 393/15 inter alia stated that since his appointment as legal Aid Counsel he tried his best to contact with his family and for submitting document in proof of juvenility of the accused but failed. Heard both sides. It is submitted by the ld. defence counsel that it would not be practicable in this stage for the court to go for ossification test and in that case the accused will have to remain further period in the jail along with hardcore criminals.

It appears that the age of the convict is a marginal one and it is very difficult to ascertain his real age that existed about six months back ie, on the date of occurrence. After hearing both sides including the convict it appears that the defene side is not in a position to prove the juvenility of the convict and thus option lies to the court to pass an order for medical / ossification test which may take further time for which the convict shall have to remain in the jail and that too, in touch of other criminals.

19. On consideration of above, having regard to the circumstance of the case and all other aspects it appears to the court that it is expedient to release the accused on probation of good conduct instead of sentencing him at once to any punishment. Therefore accused is to be released on probation of good conduct by entering into a bond as per section 4 of the Probation of Offenders Act for a period of one year for keeping peace and good behavior and to appear and receive sentence if any as and when called upon. Accordingly bond is submitted and he is released on probation.

- 20. With regard to the scheme of victim compensation, upon consideration of the very tender age of the victim and nature of injury, I am of the view that an amount of Rs.15,000/- would be adequate as compensation under section 357 A for the injuries sustained by the victim. Accordingly, the aforesaid amount is recommended for payment to the complainant as compensation to be paid by the DLSA, Cachar, Silchar. Inform the Secretary, DLSA accordingly.
- 21. Copy of FIR and deposition of complainant PW.1 are to be forwarded along with copy of judgment to the Secretary for proper identification of complainant and payement.
- Accused be furnished a free copy of the Judgment as per provision of section 363 Cr.PC. and a copy of judgment be forwarded to the District Magistrate as per section 365 of Cr.P.C.

Judgment is pronounced and delivered in the open court under my seal and signature on this 23rd <u>day of November 2015</u>.

Dictated and corrected by

Sessions Judge, Cachar

(K. Choudhury)
Sessions Judge,
Cachar, Silchar

Transcribed by K. Bhattacharjee, Stenographer

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR Spl. POCSO Case No.14 of 15

APPENDIX

(A) PROSECUTION WITNESSES: -

PW 1 – Sri Sanju Bhumij,

PW 2 – Smt. Sangita Bhumij,

PW 3 – Smti.Ankita Bhumij

PW 4 – Smti ORina Raha MO

PW 5 – Sri Sri Rajesh Bhumikj

PW.6 – Sri Jhontu Bhumij

PW.7- Sri Sirish Majumder

(B) <u>DEFENCE WITNESSES</u>: - NIL.

(C) <u>COURT WITNESSES</u>: - NIL.

(D) PROSECUTION EXHIBITS: -

Ext. 1 – FIR

Ext. 1 (1), \ Signatures of PW 1

Ext 1(2) —Signatuare he then O/c of Borkhola PS

Ext. 2 – Seizure list

Ext. 2(1),2(2)— Signature of PW 1 and PW.7 respectively.

Ext. 3 – Medical report

Ext. 3(1)(2) — Signatures of PW.4.

Ext.3(3), – Signature of Dr. Y.N. Singha

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) <u>COURT EXHIBITS</u>: - Nil

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Sessions Judge,

Cachar, Silchar.