IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl(POCSO)11/2016.

(U/S: 376(2)(i) of I.P.C. R/W 4 of POCSO Act)

State

Versus Kumar Pradhan S/O: Lt.Dhan bahadur Pradhan Vill- Barman Pather Dist-Darrang(Assam) -Accused.

PRESENT: Sri P.Saikia, A.J.S., Sessions Judge. Darrang, Mangaldai.

APPERANCE:

For the Prosecution: Sri P.Sarma, P.P., Mangaldai

AND

For the accused : Madhab Rajbangshi , Advocate.

Evidence recorded on :03/03/17, 03/04/17, 05/05/17,

06/06/17 and 05/07/17

Argument heard on : 22/08/2017.

Judgment delivered on: 05/09/2017.

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<u>JUDGMENT</u>

- 1. The prosecution case in a nut shell is that on 10/12/2015 the informant Babulal Newar lodged an FIR with the O/C, Sipajhar P.S. alleging inter alia that on 06/12/2015 in the afternoon at about 1 p.m. his minor daughter(real name is withheld, henceforth referred as the victim) while playing out side the house of the accused Kumar Pradhan, then the accused called her inside his house and thereafter committed rape on her by tying both her hands and feet.
- 2. Basing on the FIR the Officer In-charge, Sipajhar Police Station registered a case vide Sipajhar P.S. case No.787/15 U/S 376(2)(i) I.P.C. read with Section 6 of the POCSO Act and entrusted the case for investigation to A.S.I. Dalim Das. During investigation of the case I.O. visited the place of occurrence, prepared one sketch map, recorded the statement of the witnesses U/S 161 Cr.P.C and also got the statement of the victim recorded U/S 164 Cr.P.C. I.O. also obtained the medical examination report of the victim. On completion of the investigation the I.O. laid a report U/S 173 Cr.P.C. against the accused for the offence U/S 376(2)(i) IPC read with Section 6 of POCSO Act appeared to have been committed by the accused to face trial in the court of law.
- 3. After filing of the charge sheet the cognizance of the offence was taken by this court of Sessions. Whereupon a perusal of the material on record including the Police report U/S 173 Cr.P.C. a prima-facie case was made out to frame charge against the accused U/S 376(2)(ii) IPC read with Section 4 of POCSO Act. Accordingly, formal charge was framed thereunder and the same on being read over and explained to which the accused pleaded not guilty and claimed to stand trial.
- 4. At the trial, the prosecution examined as many as 6 witnesses including the M.O and I.O. of the case. The prosecution has also relied on some documents marked as exhibits.

- 5. The accused on being examined U/S 313 Cr.P.C. has taken a plea of innocence and declined to enter upon defence.
- 6. Situated thus, the point for determination is set forth as follows: (i)Whether the accused on 06/12/15 at 1 p.m. at Barman pathare under Sipajhar P.S. forcefully committed rape on Sri Anicha Newar, daughter of complainant Sri Babulal Newar who is 12 years of age as alleged U/S 376(2)(i) IPC read with Section 4 of POCSO Act?
- 7. I have heard argument rendered by the learned counsel of both the sides. I have also carefully also evaluated the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

- 8. PW1 Babulal Newar is the first informant of the case. He has testified to the effect that he lodged the FIR one year ago against the accused. On that day after returning from working when he reached home his wife stated to him that the accused had committed rape upon his 13 years old daughter. The FIR was written by one scribe at his home and the same was read over to him and finding the contents therein as correct he put his thumb impression thereon.
- 9. In cross examination he has stated that on 10/12/15 on the day of lodging the the FIR, the accused had not committed any act upon his daughter. After having came to know of the incident he he lodged the FIR. It is also not known to him who had actually written the FIR and who submitted the same at the Police Station. The accused belongs to his same village and he has no grudge against the accused. He has also no objection if the accused is acquitted.
- 10.PW2 Mozamil Hoque is the scribe of the FIR. It is his evidence that on 10/12/15 he had writen one FIR at the instruction of the

informant(PW1). When read over the contents of the FIR to the informant and the same was found correct by the informant put his thumb impression therein. He has proved the FIR as ext.1, wherein ext.1(1) is the endorsement given by him near the thumb impression of the informant. He has also proved his signature as scribe. Ext.1(2) is his signature.

- 11.In cross examinatrion he has stated that he was told about the incident on the date of writing the FIR. At the time of writing the FIR the victim was not present. The FIR was written in front of the Police Station. He has denied the suggestion that he had not read over the contents of the FIR to the informant. However, the same does not reflect in the FIR. He does not know anything about the incident. However, he has denied that he had prepared the FIR at his home.
- 12.PW3 is the victim. She has stated that the accused is known to her and his house is situated in her same village. Her father lodged the FIR against the accused alleging that he committed rape upon her. After lodging of the FIR the Police visited their home and produced her before the Magistrate to record her statement. She has proved and marked her statement before the Magistrate as ext.2. Ext.2(1) and 2(2) are her signatures. She was also medically examined. In her statement U/S 164 Cr.P.C. she had not deposed truely.
- 13.In cross examination she has revealed that the accused is her uncle in relation. As the accused had not allowed her to play on that she falsely reported the same to her father. The accused had not committed any bad work or rape upon her. She has no grudge against the accused at present.
- 14.PW4 Chinmoy Baruah is the Judicial Magistrate. According to his evidence on 11/12/15 he was working as Judicial Magistrate First Class, Mangaldai. On that day he had recorded the statement of

the victim in connection with this case. The statement was recorded by him in capacity of himself being the Aleka Magistrate of Sipajhar Police Station. The I.O. of this case ASI Dalim Das has brought the victim before him. Accordingly, her statement on oath U/S 164 Cr.P.C. was recorded by him in presence of her father as per Section 26(1) of POCSO Act,2012. Thereafter, he granted custody of the victim girl to her father(informant) on execution of P.R. Bond. He has exhibited the statement of the victim U/S 161 Cr.P.C. as ext.2, ext.2(1) is the signature of the victim taken before him. Ext.2(2) is also another signatures.

- 15.In cross examination he stated that at the time of examination of the victim girl the I.O. was not present before him.
- 16.PW5 Dr. Mrs Lipika Bora is the Medical Officer who examined the victim in connection with this case. Her evidence reflects that on 31/12/15 while she was working at Sipajhar CHC as Senior Medical and Health Officer she examined the victim girl in connection with Sipajhar PS case No.787/15 and on examination she found (i) no spermatozoa in vaginal swab of the victim girl, (ii) victim's age was 12 to 13 years from the X-ray examination report, (iii) uterus size was normal, (iv) pregnancy test negative, (v) no injury was seen in her private part at the time of examinatio and (vi) no sign of rape was seen at the time of examination. Cross examination ofg PW5 was declined by the defence.
- 17.PW6 Dalim Das is the I.O. of the case. It is his evidence that on 10/12/15 he was acting as ASI of Police at Sipajhar Police Station. On that day the O/C, Sipajhar Police Station received an FIR lodged by informant Babulal Newar. Accordingly, the Officer-incharge of Sipajhar Police Station registered a case and entrusted him to take up the investigation of the case. During

investigation he visited the place of occurrence, prepared one sketch map, recorded the statement of the witneses U/S 161 Cr.P.C. He also got the statement of the victim recorded U/S 164 Cr.P.C., sent the victim for medical examination and obtained her medeical examination report. He also arrested the accused and forwarded him to custody. On completion of investigation he laid a report U/S 173 Cr.P.C. against the accused for the offence U/S 376(2)(i) IPC read with Section 6 of POCSO Act. He has proved and marked the sketch map as Ext.4 and ext.4(1) is his signature. Ext.5 is the charge sheet, wherein ext.5(1) is his signature.

- 18.In cross examination he has revealed that the incident occured on 06/12/15 and the FIR was lodged after 4 days of the occurrence. No explanation has been made in the FIR regarding delay in lodging the same. He only recorded the statement of the available witnesses near the place of occurrence. The informant of the case after the incident came to their Police Station on 27/01/16 and he wanted to withdraw the case against the accused, but they expressed their inability and informed the informant to file a petition in this regard before the court.
- 19.On careful analyses of the above discussed evidence on record, what has emerged that there is no cogent, consistent, trustworthy and reliable evidence to establish the guilt of the accused.
- 20.If we consider the evidence of the most important witness of the case it would appear that PW3(victim) she has denied the complicity of the accused in committing rape upon her. In no uncertain terms she has disclosed in her in-chief examination that on the date of the occurrence the accused did not commit rape on her and whatever she has stated before the Magistrate in her statement Ext.2 had not been deposed truely and thereby this witness has given a blow to the prosecution case at the very

root destroying the basic fabric of the prosecution story. Even in her cross examination she has reiterated that the accused had neither committed bad work nor rape upon her on the day of occurrence. She has further revealed that as the accused who is her uncle had not allowed her to play on that day and out of grudge she falsely reported the matter to her father. She has no grudge at present against the accused.

- 21. The testimony of the first informant(PW1) is also equally contradictory to the FIR(ext.1) lodged by him. He has disclosed in cross examination that on 10/12/15 though he lodged the FIR the accused had not committed any rape on her.
- 22. Thus, it appears from the testimony of this vital witnesses PW1(informant) and PW3(victim) that they have not even whispered a single word against the alleged charge levelled against thew accused. Their evidence is found to be bereft of trustfulness as they have cast off of the prosecution case at its genesis. Hence, the value of the statement of the victim girl(PW3) recorded U/S 164 Cr.P.C. pales into insignificance in the face of incoherent and inxonsistent evidence adduced by the victim(PW3).
- 23.In view of such irreconcilable evidence adduced by the vital witnesses as discussed above what has remained is the testimony of the medeical Officer(PW5). Her evidence is also found to be not at all consistent with the prosecution case as during examination of the victim girl(PW3) she found no sign or rape on the victim nor had she found injury mark on her body and private parts.
- 24. Now, coming to the testimony of PW6(I.O) of the case which is a formal in nature yet in his cross examination he has further rendered the prosecution case more improbable as to the commission of rape by the accused inasmuch as he has

disclosed that after lodging the FIR on 10/12/15 after 4 days of the incident by the informant which occured on 06/12/15 the informant again came to the Police Station on 27/01/16 and wanted to withdraw the case against the accused, but they expressed their inability in this regard by informing the informant(PW1) to file a petition in this regard before this court. Situated thus, it is evident from the incoherent and discrepant evidence on record that had the accused committed rape on the victim(PW3) on the day of occurrence the informant (PW1)would not have waited for 4 days to file the FIR and thereafgter he would not have again came to the Police Station to withdraw the case against the accused coupled with non finding of sign of rape by the medical Officer(PW5) invariably implies that the prosecution case is a concocted one against the accused.

- 25. Having found no shred of implicating evidence on record against the accused, I hold the accused Kumar Pradhan not guilty U/S 376(2)(i) IPC read with Section 4 of POCSO Act. He is thereafore, acquited thereunder. Set him at liberty.
- 26.Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 5th day of September, 2017.

Dictated and corrected by me and each page bears my signatures

(P.Saikia), Sessions Judge, Darrang,Mangaldai.

Sessions Judge, Darrang, Mangaldai.

APPENDIX

A)Prosecution witnesses:

- i)PW1 Babular Newar
- ii)PW2 Mozamil Hoque
- iii)PW3 Anisha Devi
- iv)PW4 Chinmoy Baruah
- v)PW5 Dr.Mrs. Lipika Bora
- vi)PW6 Dalim Das
- B)<u>Defence witness</u>: Nil.

C)Exhibits:

- i)Ext.1, ejahar
- ii)Ext.2 statement of victim.
- iii)Ext.3 GR case record.
- iv)Ext.4 medical report.
- v)Ext.5 charge sheet.

Sessions Judge, Darrang, Mangaldai.