#### IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

# <u>Spl. (P) Case No. 15 of 2016 U/S 4 of POCSO Act, 2012.</u> (Arising out of Demow P.S. Case No. 98/2016)

State of Assam

-Vs-

Sri Hemanta Pandav ...... Accused

**APPEARANCE:** 

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. D. K. Gohain, Advocate

(State Defence Counsel)

Date of framing Charge : 21.07.2016

Dates of Evidence : 24.05.2017, 28.08.2017,

20.03.2018, 11.06.2018,

29.08.2018

Date of S/D : 24.09.2018

Date of Argument : 02.02.2019

Date of Judgment : 16.02.2019

## JUDGMENT

1. Prosecution case in brief is that on 03.05.2016, one Sri N. Pandav lodged an FIR with O/C, Demow P.S. alleging, inter alia, that by maintaining love affairs for about a year with his minor daughter victim 'R' (name withheld), about two months back (from the date of filing FIR), accused forcibly committed rape on the victim by taking her to Deroi Bagan and caused her pregnant. When the matter was informed to informant by the victim, the accused took the victim to his house and kept for six days. However on 30.04.2016 the parents-in-law and husband of the victim drove her away from their house and on her return, she disclosed the matter to them.

- 2. On this FIR, Demow P.S. Case No. 98/2016 u/s 4 of POCSO Act, 2012 was registered and investigated. During investigation, accused was arrested and forwarded to Court. The victim was medically examined and also sent to Court for recording her statement u/s 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet against the accused u/s 4 of POCSO Act, 2012.
- 3. Upon taking cognizance on the Charge-Sheet and after furnishing copy to the accused, vide order dated 21.07.2016, my learned predecessor in office has framed the charges u/s 4 of POCSO Act, 2012 against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined seven witnesses including M.O. and I.O.
- 4. Upon completion of the prosecution evidence, accused was examined u/s 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. D. K. Gohain, learned State Defence Counsel and gone through the evidence on record. I have considered the submission of both the sides.

### POINTS FOR DETERMINATION ARE

- 6. (i) What was the age of the victim at the time of incident?
  - (ii) Whether accused has committed penetrative sexual assault on the victim?

## **DECISION AND REASONS THEREOF**

7. PW-1 Dr. Sanjib Mahanta, the medical officer in his evidence deposed that on 04.05.2016 at about 12.30 PM, on police requisition, he examined the victim R in connection with Demow PS Case No. 98/2016 U/S 4 of POCSO Act. On examination he opined that the victim girl was below 18 years of age. There was no evidence of injury or sign of recent sexual intercourse. There was no evidence of pregnancy at the time of examination. Ext. 1 is the

medical report and Ext. 1(1) is his signature. Ext.1(2) is the X-ray report of Dr. Ranjit Hazarika, radiologist. In his cross examination, PW-1 deposed that before medical examination, he has not taken the history of the occurrence from the victim. Due to incomplete fusion of one joint the girl cannot be said to have attained majority even though elbow joint shows complete fusion. He denied that due to the fusion of elbow joint, the girl was above 18 years.

8. PW-2 the victim R in her evidence deposed that about 1½ years back, she was a student of class VIII. On the day incident, at about 2 pm while she was returning from school alone, on way, accused Hemanta met her and forcibly took her to inside Diori T.E. and opened her cloth, and by laying her on ground, committed rape on her. She resisted him but failed. After committing rape, he intimidated her for not to disclose the matter to others. After about three amounts of this incident, accused took her to his house with an intention to marry her and made physical relation with her. After keeping her for a week, mother of the accused forced her to leave her house. On returning home, she informed the mater to her aunty Jina Pandav and her mother. On this they went to the house of the accused to keep her in the house of accused but he refused to accept her. She become pregnant due to physical relationship with the accused. Due to refusal of the accused to keep her with him, her father lodged the FIR. Police got her medically examined. She was taken to Court, where she gave her statement vide Exbt. 2. Exbt. After filling of the case, due to falling, miscarriage occurred. In her cross examination by defence, PW-2 deposed that before police she stated that, she was a student of class X and her age was 16 years. Accused is a resident of Amguri but he used to reside and doing cultivation at the residence of his maternal uncle Munindra Pandav of Saru Diroi Gaon. Her residence is at Bor-Diori Gaon. Accused used to visit their residence and came in touch with her. Dayabati Pandav is her elder sister. She is elder then her for about 10 years. She denied that accused had love affairs with her sister Dayabati. Prior to alleged incident of this case, she went with the accused to his Amguri Residence at Tiphuk T.E. and stayed there with him. On

the date of incident, after committing rape, accused assured her to take her with him. She did not inform the incident of alleged rape or taking her with him to her parents or anybody else. She has not stated before police that accused assured her to take with him. She denied that accused did not take her to inside T.E. and committed rape on her. Doctor has confirmed her pregnancy and police took the papers from her. During medical examination after the case, she informed the doctor about her pregnancy. She denied that, she deposed falsely about her pregnancy and miscarriage. She denied that after the alleged incident, she on her own went to the residence of accused to stay there and but mother of the accused compelled her to leave the house by giving intimidation. Her father has filed this case as accused refused to keep her with him. She denied that her father has filed this false case.

9. PW-3 Sri Neeladri Pandav, father of the victim, in his evidence deposed that about 1½ years back, his daughter was a student of class IX. On knowing that his daughter was pregnant by two months, on asking she told him that accused Hemanta has forcibly taken her to Diroi Bagan and committed rape on her. During summer vacation, his daughter went to the house of accused and stayed there for about one month. After this Hemanta put back Victim to his house. On this, they went to the house of accused for putting Victim to his house and a village meeting was organised but accused refused to accept her and also refused to take burden of her pregnancy. On this they returned back and he filed this case at Demow PS. FIR was written by Padmeswar Rajbangshi. Exbt. 3 is the FIR. Police seized one school certificate of age. Exbt. 4 is the seizure list. Exbt. 4(i) is his signature. After filling of this case, miscarriage happened with victim due to her fall. In his cross examination by defence, PW-3 deposed that prior to this incident, victim went to the house twice and after the alleged incident, she went to the house of accused once and stayed there for few days. Except on coming on light about pregnancy, Victim never told him about any physical relation or incident of rape by accused with her. He lodged the FIR on the next day of refusal by the accused to keep her

with him. In his FIR, he mentioned that on 30.04.2016, husband and father-in-law of his daughter have driven her out and on her briefing, he came to know about the incident. He lodged the FIR on 03.05.2016. He brought the school certificate with him. He denied that he has not given any certificate to police. He denied that he has no knowledge as to why he put his signature in Exbt. 4. He denied that he deposed falsely about pregnancy and miscarriage of his daughter.

10. PW-4 Smt. Jeena Pandav in her evidence deposed that at the time of incident victim was aged about 13 years. About 1½ years back, while Victim Pandav was a student of class VIII, one day she told her that since last two months she did not have menstruation period. On this, she was taken to demow hospital for pregnancy test which gave positive test. On being confirmed that she was pregnant by two months, on asking she told her and others that while she was returning from school, accused Hemanta has taken her to Diroi Bagan and committed rape on her. She has also told her that she was taken by accused for three four times. Prior to confirmation of pregnancy, victim went to the house of accused and stayed in his house for about one week. On knowing about pregnancy by accused, they went to the house of accused for putting victim to his house and a village meeting was organised but accused refused to accept her and also refused to take burden of her pregnancy. Parents of accused also denied the allegations. On this, father of victim, filed a case at Demow PS. After filling of this case, miscarriage happened with victim. In her cross examination by defence, PW-4 deposed that she cannot say how victim came in touch with accused Hemanta. Only after becoming pregnant victim told her about the incident. On knowing about pregnancy, they made attempt to put victim in the house of accused and on failure, matter was informed to police. After two months of filling the case, miscarriage happened to Victim. She denied that accused was not responsible for the alleged pregnancy of Victim. She denied that victim was never pregnant nor any miscarriage happened to her. Mother of Victim expired long back.

Dayabati is the elder sister of Victim. Dayabati is the eldest. Victim is the youngest. In between them, there are three other children of Niladri. She denied that Victim is aged more that 18 years. The incident was informed to maternal uncle of the accused. She denied that her evidence on village meeting is false and she did not state about the meeting to Police. Meeting was held at Tiphuk Bagan. She denied that a meeting was held at Deroi which was attended by Munindra Pandav. She denied that on denial allegation by Munindra, Niladri lodged this false case.

- 11. PW-5 Sri Manglu Pandav in his evidence deposed that father and aunt of victim informed him that victim was pregnant by two months through accused Hemanta Pandav and took him to the house of accused. A village meeting was organised at the court yard of the accused but accused refused to accept victim and also refused to take burden of her pregnancy. Family members of accused also rebuked them. On this, they returned back and Nialdri filed this case at Demow PS. Police seized one school certificate of Victim Panday. Exbt. 4 is the seizure list. At that time Victim was a student of class IX. In his cross examination by defence, PW-5 deposed that he came to know about the incident only on the day of going to the house of accused. He has not seen the seized certificate in Court. While giving statement to police, he has not stated that victim was a student of class IX. Dayabati is the elder sister of Victim. She is elder by about 1½ - 2 years from victim. He has not inquired from victim about her pregnancy. Munindra Pandav, is a school teacher and he is the maternal uncle of accused. Victim has his relative at Tipuk T.E., the village of accused. He has no knowledge about visit of victim to the village of accused. He never heard that a proposal for marriage of Dayabati was given to accused but he refused. He has no personal knowledge about pregnancy of Victim or delivery. He has not noticed about pregnancy symptoms on Victim. He deposed only on the basis of information derived from Jina and Niladri Pandav.
- 12. PW-6 Sri Munindra Pandav, maternal uncle of the acused, in his evidence deposed that after filling of this case by Niladri Pandav, he heard that Spl (P) Case No. 15 of 2016 Page 6 of 12

victim was pregnant through accused Hemanta Pandav. He also heard that a village meeting was organised at the court yard of the accused but he is not aware of the result of the meeting. Victim was student of his school and left the school after passing class IV and joined M.E. School. In his cross examination by defence, PW-6 deposed that Dayabati is the elder sister of Victim. He know that a proposal for marriage of Dayabati was given to accused but his parents refused. He heard that by taking the proposal of marriage of Dayabati to the house of accused and on their refusal, they filed this case. He has no personal knowledge about pregnancy of victim. He has not asked the matter to victim, Jina or Niladri Pandav. He has not noticed about pregnancy symptoms on Victim. He has not heard about abortion of Victim.

13. PW-7 Inspector Dipak Sutradhar, the I/O of this case in his evidence deposed that during investigation, he seized the School certificate of the victim on being produced by the informant. Exbt. 4 is the seizure list. As per the school certificate, on 31.12.2014 the victim was 14 years of age. Original school certificate was given in zimma to the informant. Thereafter, at about 4 PM he arrived at the place of occurrence i.e. section No. 2 of Diroi T.E. as shown by the victim, he drawn a rough sketch map of the PO. Exbt. 5 is the said sketch map. Exbt. 5(i) is his signature. On 04.05.2016, the victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. During investigation, he has collected the medical report and statement given by victim in court. On 23.05.2016, accused was arrested from Tipuk T.E. under Halwating PS and forwarded to Court. On completion of investigation, he has submitted charge sheet against the accused u/s 4 of POCSO Act. Exbt. 6 is the charge sheet. In his cross examination by defence, PW-7 deposed that as per FIR, date of occurrence was on 30.04.2016 and FIR was lodged only on 03.05.2016. In the FIR there was no mention as to cause of delay in lodging FIR. The victim while giving statement to him has stated her age as 16 years and that she is a student of class X. Victim in her statement did

not stated that "accused has assured her to take with him." As per medical report, there was no mention of finding pregnancy of the victim.

- 14. Point No. I: So far age of the victim is concerned, PW 1 the M.O. in his evidence opined that the victim girl was below 18 years of age and said opinion was formed due to incomplete fusion of left wrist joint epiphysis. The victim in her evidence as PW 2 while claiming her age as 14 years stated that at the time of incident she was a student of Class-VIII. However in her cross by defence she stated that before police she has stated her age as 16 years and a student of Class-X. PW 4 Smt. Jeena Panday, aunt of the victim claims that at the time of incident victim was aged about 13 years. PW 7, the I.O. of this case in his cross confirmed that victim has stated her age as 16 years and also claimed that she is a student of Class-X. Admittedly PW 7, the I.O. has seized one school certificate of the victim which discloses that on 31.12.2014 the victim was 14 years of age. From the above materials on record, I am of the opinion that on the date of filing of the FIR i.e. on 03.05.2016, the victim was aged about 16 years.
- 15. So far allegation of penetrative sexual assault on Point No. II: the victim is concerned, it was the evidence of the victim that while she was returning from school alone, accused forcibly took her to inside Deroi Tea Estate, opened her cloth and by laying her on ground committed rape on her against her will. She further stated that after committing rape, accused intimidated her for not to disclose the matter to others. She further stated that after about three months of this incident, accused took her to his house with an intention to marry her and after keeping her for a week but mother of the accused forced her to leave their house. Then she returned home and informed the matter to her mother and aunt. On this, they also went to the house of the accused to keep her in the house of accused but he refused to accept her. The victim specifically stated that she became pregnant due to physical relationship with the accused. She further stated that after filing of the case, due to falling, miscarriage happened. However on looking at the evidence of PW 1 the M.O.,

it appears that FIR was lodged on 03.05.2016 and on the next day victim was examined at Sivasagar Civil Hospital and upon examination, Doctor did not find any mark of violence on her body, no discharge or stain were found and the pregnancy test gave negative result. Thus it appears that during medical examination, the M.O. did not find any evidence of pregnancy on the victim which makes the evidence of the victim doubtful so far her claim that she conceived through accused and after filing of the case, miscarriage happened. Had the same been true, the M.O. could have either detect the pregnancy or detect the fact of abortion.

- 16. In her cross examination, the victim admitted that while the accused used to reside at the house of his maternal uncle, he used to visit her residence and came in touch with her. She further admitted that accused is a resident of Amguri and prior to alleged incident of this case, she went with the accused to his Amguri residence and stayed there with him. She admitted that she did not inform the alleged incident of rape or taking her with him to her parents. From the above admissions, it appears that the victim is a close acquaintance of the accused and prior to the alleged incident of rape, she visited his residence and stayed with him. Admittedly the case was filed due to refusal of the accused to keep the victim with him. Victim denied that she forcibly wanted to stay with the accused, on which the accused refused to accept her.
- 17. PW 3, the informant is hearsay witness so far the allegation of penetrative sexual assault on the victim. In his evidence he stated that during summer vacation, his daughter victim went to the house of accused and stayed there for about one month. However, this fact was suppressed in the FIR. After putting back the victim to his house, the case was filed. In his cross, he admitted that prior to this incident, victim went to the house of accused twice. He also admitted that except on coming on light about pregnancy, the victim never told him regarding her physical relationship with the accused. PW 4, the aunt of the victim in her evidence stated that she came to know about the

alleged incident of rape on the victim due to stopping of her menstruation period and upon confirming her pregnancy for about two months. She further deposed that accused took her to Bagan for 3-4 times, which the victim did not allege. She further stated that prior to confirmation of pregnancy, victim went to the house of accused and stayed in his house for about one week. On knowing about the pregnancy through accused, they again went to the house of accused for putting the victim and on his refusal, the case was filed.

- So from the above evidence on record, it appears that there is a 18. vast difference between the circumstances and the facts as narrated by PW 2 the victim, PW 3 and PW 4. As per the victim, about two months back, rape was committed on her for which she become pregnant and on detecting her pregnancy she informed the matter to the accused and accused took her to his house, kept her for six days, but his parents did not allow her to stay there. More or less this fact was supported by her father PW 3, but her aunt PW 4 has twisted the facts. PW 4 affirmed that before detection of pregnancy, victim went to the house of accused, stayed there for about one week and on detection of pregnancy she was sent back. Thus, it appears that none of the witnesses corroborating each other on material points. I have already held that the version of detection of pregnancy and subsequent miscarriage after filing of the FIR was negated by the PW 1, the M.O. PW 5 and PW 6 are hearsay witnesses of the village meeting. PW 7 is the I/O, who did the routine investigation of this case.
- 19. The above contradictions as mentioned and found in the evidence of PW 2 the victim, PW 3 and PW 4 clearly indicates that Section 29 of POCSO Act 2012 cannot be made applicable in this case. The legal presumption appears to have been rebutted by the inherent contradictions found in the evidence of PW 2, PW 3 and PW 4. The evidence of PW 2 the victim alone is found untrustworthy and unbelievable though her evidence stands on a higher pedestal than the evidence of other witnesses. In this case a big doubt remains in the prosecution story so far role of the accused is concerned. In absence of SpI (P) Case No. 15 of 2016

any presumption due to the contradictory evidence of PW 2 with PW 3 and PW 4, I am of the opinion that accused deserved to get benefit of doubt.

- 20. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 4 of POCSO Act 2012 or any minor offence against the accused Hemanta Pandav. As such, accused Hemanta Pandav is acquitted from the charge u/s 4 of POCSO Act, 2012 and set at liberty forthwith.
- 21. Bail bond executed by the accused and his surety stand extended for another six months from today u/s 437-A Cr.P.C.
- 22. Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- 23. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 24. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 16<sup>th</sup> day of February 2019 at Sivasagar.

Special Judge, Sivasagar

## **APPENDIX**

- 1. Prosecution witnesses -
  - PW 1 Dr. Sanjib Mahanta (M.O.)
  - PW 2 Victim 'R'
  - PW 3 Sri Niladri Pandav (Informant)
  - PW 4 Smt. Jeena Pandav
  - PW 5 Sri Manglu Pandav
  - PW 6 Sri Munindra Pandav
  - PW 7 Inspector Dipak Sutradhar (I.O.)
- 2. <u>Defence witnesses</u>: None
- 3. <u>Court witnesses</u> : None
- 4. Exhibits by prosecution -
  - Exbt.1 Medical report
  - Exbt.2 Statement of the victim given u/s 164 Cr.P.C.
  - Exbt.3 FIR
  - Exbt.4 Seizure list
  - Exbt.5 Sketch map
  - Exbt.6 Charge-Sheet.

Special Judge, Sivasagar: