IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Special(POCSO) case **No.3/15.** (U/S :354 IPC & 8 of POCSO)

State Versus

1)Md. Ajahar Ali, S/O Md. Sahed Ali Vill- No.1 Dhalpur, P.S.- Sipajhar, Dist- Darrang(Assam) --Accused.

PRESENT: Sri G.Baruah,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

For the Prosecution: Sri G.R.Baruah, P.P., Mangaldai

AND

For the accused : Md. B. Ali, Advocate.

Evidence recorded on: 11/08/15, 18/12/15, 12/11/15, 01/12/15,

and 28/03/16.

Argument heard on : 27/04/2016.

Judgment delivered on: 30/04/2016.

JUDGMENT:

- 1. The prosecution case as unfolded during trial is that one Md.Abdul Bakki on 25/12/14 lodged an FIR before the O/C, Sipajhar PS inter alia alleging that on 24/12/14 at around 4.30 p.m. while his daughter Miss Phul Banu aged about 10 years had gone to bring back their goat from the nearby field, the FIR named accused person Ajahar Ali dragged her by her hand to the maize field and with bad intention pressed her on the ground. When his daughter raised alarm nearby people came and caught the accused person and handed over to Dhalpur VDP and as such, prayed to take necessary action. In the FIR he has named Ajahar Ali as accused.
- 2. On receipt of the FIR, O/C, Sipajhar PS registered Sipajhar PS case No.803/14 U/S 354 I.P.C. read with Section 6 of POCSO Act. Police during the course of investigation has recorded the 164 Cr.P.C. statement of the victim through a Judicial Magistrate First Class, Mangaldai, examined her before a Doctor, arrested the accused and forwarded him to judicial custody and after completion of investigation submitted charge sheet against the accused Ajahar Ali U/S 354 I.P.C. read with Section 6 of the POCSO Act.
- 3. During the course of investigation the accused was allowed to go on bail. After submission of charge sheet the accused made his appearance before this court and he was allowed to remain on previous bail. After going through the record and after hearing the learned counsel of both sides, this court found prima-facie materials to frame charge U/S 354 I.P.C. read with Section 8 of POCSO and accordingly, framed charge. On being read over and explained the accused person pleaded not guilty and claimed to be tried.
- 4. The prosecution in order to bring home the charges against the accused person has examined altogether 7 PWs including Medical Officer and one Investigating Officer.
- 5. 313 Cr.P.C. statement of the accused person was recorded. In his statement the accused took the plea that on the day of occurrence one goat entered into his field and destroyed the crops for which he was dragging the goat with a rope. He stated that the victim along with her

friend Khudeja and Hasina arrived and asked him to leave the goat and when he refused the victim girl dragged the goat from one side and when he dragged the goat from other side the victim fell on the ground and sustained injury. He stated thereafter he left the goat and victim took the same. He also took the plea that he has previous quarrel with the father of the victim.

 I have heard the argument put forwarded by the learned Public prosecutor as well as the learned defence counsel. I have gone through the entire case record, evidence brought into record, both oral and documentary.

7. Points for determination:

(i)Whether on 24/12/14 at around 4.30 p.m. at village Dhalpur under Sipajhar PS the accused Ajahar Ali used criminal force against the victim girl aged about 10 years intending to outrage her modesty and at the same time committed sexual assault on the victim girl and thereby committed an offence punishable U/S 354 IPC read with Section 8 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8. The prosecution has examined Dr. Archana Baruah as PW6 who has deposed that on 26/12/14 she has examined the victim girl, daughter of Abdul Bakki in connection with Sipajhar PS case No.803/14 and after examination found her age approximately between 12 to 14 years. She has not found any injury mark on her private party. She has exhibited her report as ext.2 and Ext.2(1) as her signature. The defence has not cross-examined PW6.
- 9. From the evidence of PW6 it is found that she has not been cross-examined and from her evidence it is clear that the victim on the day of occurrence was approximately aged 12 to 14 years and that the Doctor has not found any injury on her private part. From the evidence of PW6 it is clear that the victim was a minor girl on the day of occurrence.
- 10. The prosecution has examined the informant Abdul Bakki as PW1. He has deposed that on 24/12/14 at around 4.30 p.m. his victim daughter aged about 10 years went in search of their goat and at that time the accused

person Ajahar Ali dragged her towards the maize cultivation and tried to commit rape upon her. He also deposed that at that time his daughter was accompanied by two of her friends and as they raised hue and cry nearby people gathered there, his daughter was recovered and the accused was caught and handed over to VDP who in turn handed him over to Police station. He stated that in this connection he lodged the FIR, where he put his thumb impression. During his cross-examination PW1 stated that at the time of occurrence he was in the market. He stated that the accused has cultivable land adjacent to his own land and boundary dispute is going on between them for quite sometimes and on the day of occurrence he came to home only at 8 p.m.. He also stated that he heard about the incident from the village people and lodged the FIR.

- 11. While going through the evidence of PW1 the informant it is found that he has not seen the occurrence. He filed the FIR after hearing about the incident from village people. He has not stated during his evidence from whom he has heard about the incident. He admits during cross that the cultivable land of the accused is adjacent to his land and a boundary dispute was going on between them.
- 12. The prosecution examined the victim girl as PW2 who deposed that the occurrence took place in the month of Puh in the year 2014 when she was studying in class V. He deposed that on that day at around 4.30 p.m. she along with his friend Khudeja and Hasina went in search of their goat and while they were searching their goat the accused Ajahar dragged her towards the maize field and tried to commit rape upon her. But when they raised hue and cry some other persons appeared and rescued her. She also stated that the accused person was caught by the other person and handed over to VDP party. She also stated that she gave her statement U/S 164 Cr.P.C. before the Magistrate and she identified the same as ext.1 and ext.1(1)and 1(2) as her signatures.
- 13. During her cross examination she deposed that on the day of occurrence she along with Khudeja and Hasina went in search of their goat to the maize field. She admitted that the maize cultivation of her family is adjacent to the maize cultivation of the accused. She also stated that she

saw her goats when inside the maize field of the accused and the accused dragging their goat towards his home. She stated that she went to bring back the goat from the accused person. She further stated in cross examination that when the accused dragged the goat through a rope she fell on the ground and thereafter she raised alarm. She also stated that after hearing her alarm one Latif who was working near the maize field came running and took her up from the ground. She also stated that she saw other persons also gathered at the spot. In her cross she specifically stated that the accused person has not committed any act of outraging her modesty. She also stated that a dispute is going on between her father and the accused person.

- 14. While going through the evidence of PW2 victim girl we found that she in her evidence in examination-in-chief has deposed that on the day of occurrence the accused dragged her towards the maize field and tried to commit rape upon her and on the other hand, during cross examination she specifically stated that the accused has not done anything to outrage her modesty. She also specifically stated in cross that she fell on the ground when the accused dragged the goat with a rope and thereafter she raised alarm. From the evidence of the victim it appears that she is contradicting her own statement which she has given in her examination-in-chief.
- 15. While scrutinizing the evidence of the victim girl , we found that there is no dispute that she is a child aged 10 to 12 years. Hon'ble Supreme Court in catena of cases has observed that while evaluating the evidence of a child witness court has to be very careful as the child is an easy prey to tutoring. Therefore, before acting on the testimony of child witness court should look for adequate corroboration from other evidence(reported in (1998)7 SCC 177 Panchi and others VS State of UP).
- 16. In another case reported in 2000(3) SCC page 70 State of UP Vs Ashok Dixit, the Hon'ble Supreme Court held that it is always subject to question of fact in every case, and there is no universal rule that the evidence of a child witness, even if it cannot be dislodged on the test of facts and probability of a particular case the same can never be sufficient for

- convicting an accused without corroboration. A careful perusal of the observation of the Hon'ble Supreme Court in connection with the evaluating the evidence of a child witness it is clear that though there is no rule that the testimony of the child witness cannot be accepted, but it is always safe for the court to look for corroboration.
- 17. In our case we have found that the victim in her evidence has contradicted her own statement during cross examination. The prosecution has examined Must. Khudeja aged about 11 years who is the friend of the victim and was present with the victim on the day of occurrence as PW4. She deposed before the court that she knows both the accused and victim girl who is her friend and also stated that on the day of occurrence goats of the victim went to the maize field of the accused, where the accused has kept the goat for which some hue and cry took place. She specifically stated during cross that she was present with the victim girl. She stated that the goats of the victim girl has destroyed some maize cultivation of the accused and when the victim tried to bring back the goat from the field of the accused person the accused resisted the same by dragging the goat for which the victim fell on the ground. She also stated that at that time one Latif Ali appeared at the place of occurrence.
- 18. The prosecution has examined Md. Latif Ali as PW5. He deposed that at the time of occurrence he was working in the field and heard crying of the victim girl and one Hasina and another girl and he went towards them and saw the accused person trying to go away from the place of occurrence. He stated that he caught the accused and handed over him to the VDP personnel. During cross he confirmed when he reached the place of occurrence he has found the victim lying on the ground with her two friends nearby along with goats. He also stated that thinking that accused might have assaulted the victim he caught hold of him.
- 19. The prosecution has also examined one Hasen Ali as PW3, who simply stated that he heard that the accused tried to assault the victim when the victim went to the maize field to bring her goats.
- 20. While evaluating the evidence which has come into record together we found that the testimony of the victim which she has deposed in her

examination-in-chief has not been corroborated by the other witnesses.

At the same time whatever the victim has deposed during her cross examination is found to be corroborated by the other witnesses. In her cross examination the victim has stated that when the accused dragged the goat with a rope she fell on the ground and thereafter, raised alarm and one Latif Ali arrived there. She has also stated in cross that Khudeja and Hasina were with her. That she fell on the ground while the accused dragged the goat with a rope has been corroborated by her friend Khudeja during her evidence. Another witness Latif has only stated that he caught the accused thinking that the accused might have assaulted the victim. He also confirmed to have seen victim, her friends and goat in the place of occurrence. Latif Ali has not seen any other incident. The Hon'ble Supreme Court as discussed earlier have observed that before acting on the testimony of a child witness the court must seek for corroboration, if not as a rule, but as a rule of prudence. While going through the evidence available we only found that the victim on the day of occurrence went to the maize field along with her friend in search of goats and her goats have entered into the maize field of the accused person and at the time of dragging the goats she sustained injury. The victim in her cross examination has clearly stated that the accused has not done anything to outrage her modesty. We also found that during the entire course of trial the accused person has been taking this plea that the goats of the victim girl has destroyed some of his maize cultivation for which he refused to return the goats and was dragging the goats towards his home and when the victim also dragged the goats she fell on the ground and sustained injury. 21. It is a settled position of law that in a criminal case the prosecution must

- 21. It is a settled position of law that in a criminal case the prosecution must prove the guilt of the accused beyond all reasonable doubts and the accused person can not be convicted on presumption or assumption.
- 22. From the earlier discussion we have found that the prosecution has not been able to prove the guilt of the accused person beyond all reasonable doubt. As such, in my view the accused is entitled for acquittal. Accordingly, the accused Md. Ajahar Al is acquitted from all charges. He is

set at liberty forthwith. However, his bail bond shall remain in force for next 6(six) months U/S 437(A) Cr.P.C.

23. Seized articles, if any, be destroyed in due course of time.

Givein under my hand and seal of this Court this 30th day of April,2016.

Dictated and corrected by me and each page bears my signatures.

(G. Baruah) Sessions Judge, Darrang,Mangaldai.

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

A)Prosecution witnesses:
i)PW1 Abdul Bakki
ii)PW2 Miss Phul Banu.
iii)PW3 Md. Hasen Ali
iv)PW4 Mustt. Khodeja Khatun.
v)PW5 Md. Latif Ali
vi)PW6 Dr. Archana Baruah.

vii)PW7 Sri Sarat Ch. Tamung.

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1, statement of victim ii)Ext.2, Medical Report. iii)Ext.3, FIR. iv)Ext.4, sketch map. v)Ext.5, charge sheet.

> Sessions Judge, Darrang, Mangaldai.