DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:- Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 29th day of May, 2019.

SPECIAL (P) CASE NO: 48 OF 2016

Under Section

4 of the Protection of Children
from Sexual offences Act, 2012.

Read With

376(2)(i) of the Indian Penal Code.

State of Assam

-Versus-

Sri Sanjay Lama.

..... Accused Person.

Sri Basanta Gogoi..... Advocate for prosecution side. **Sri Anil Chandra. Dutta......** Advocate of the accused.

F.I.R was lodged on :::::::::: 10.10.2016

Charge framed on ::::::::::: 19.11.2016 & 06.10.18

 Argument Heard on
 :::::::::
 26.04.2019

 Judgment Delivered on ::::::::::
 29.05.2019

<u>J U D G M E N T</u>

In this case the accused person is facing trial under section 4 of the Protection of Children from Sexual Offences Act, 2012, and alternatively Under Section 376(2)(i) I.P.C.

- 1. The case of the prosecution is that, the accused, on 08.10.2016 at 3 P.M, after calling the daughter of the informant, who is 5 years old, to a nearby bamboo groove, raped her there.
- 2. That, the F.I.R was lodged before the Moranhat Police station, which registered its P.S case no 127/16 in this regard. Police after investigation forwarded charge sheet U/S 4 of the Protection of children from Sexual offences Act, 2012 against the accused person. Thereafter, on being summoned, the accused appeared before court and charge U/S 4 of the Protection of Children from Sexual offences Act, 2012 was framed against the accused person. That, at a later stage the charge was altered and Charge under section 4 of the P.O.C.S.O Act, 2012 and alternatively (as per section 42 of the P.O.C.S.O Act) Charge under section 376(2)(i) I.P.C was also framed against the accused. The charge was read over and explained to the accused person to, which he pleaded not guilty and claimed to be tried. Prosecution examined nine witnesses.
- 3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

4. <u>In this case the points for determination are:-</u>

A) Whether, the accused since 08/10/16 committed penetrative sexual assault against the daughter of the informant?

Or, alternatively,

B) Whether the accused committed rape upon the minor daughter of the informant, who is differently able?

5. <u>Discussion decision and reasons for the decision</u>

6. Before discussing of the evidences on record and before arriving at a decision, let us now look in to two vital legal aspect connected to this case. Here in this case the accused is facing trial primarily under the Protection of children from Sexual Offences Act 2012.

Section 29 of the act is as follows:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and Section 9 of this act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Here as per the procedural law the trial court shall presume the accused guilty of the offence he is facing trial, unless disproved by him.

Section 4 of the Indian Evidence act 1872 defines the term "shall Presume" as follows: Whenever it is directed by this act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

Now, behind this background, we have to come to a conclusion in this case.

Direct evidence

7. In this case the alleged victim was produced before court as PW 2. On 06-03-2017 it was observed by the then Presiding Officer that she appears to be lack understanding of questions and as such, her evidence could not be recorded for which in this case there is no evidence recorded from the alleged victim.

Other Evidences on record

8. PW 1 is the informant/mother of the alleged victim. She in her evidence deposed that Pramila Hemram is her daughter. That, her present age is 5 years. That, one year back, while she was with her daughter in their residence, accused came to her place with some cows. That, she had heard from inside that accused after talking with her daughter Pramila, took her towards bamboo bushes. That, she has seen her daughter was going behind the accused. That, after sometimes her daughter came back limping. When she asked about the matter, she started

weeping. That, she has seen her panty in wet condition with sticky article. That, her daughter told her that accused pushed his penis in her. That, she took her daughter to hospital. Her daughter was complaining, pain in her abdomen.

In cross-examination this PW deposed that she used to live in the land of accused by constructing a house. On the same day of the incident she took her daughter to Bagan hospital. That, medical certificate given by doctor was handed over to the 'Asha' sister. That, the wet panty was washed as she has no other panty. That, the accused returned from there in front of his house. On the day of the incident he was at his place of work. That, she has informed the incident to him. After the incident she met the accused at her residence. That, after leaving of the accused her daughter returned from bamboo bushes. At that time she did not ask any question to the accused.

- 9. In this case, in absence of the evidence of the alleged victim this PW/informant is the most material witness of this case. A scrutiny of the evidence of the PW 1 will yield that she has not seen the incident rather she was told by the victim (her daughter) that accused pushed his penis into her. It is also yielded from the evidence of the PW 1 that she has seen her daughter going behind the accused towards bamboo bushes. The cross-examination also yielded that the accused on the day of the incident was at his work place and she has informed about the incident to him. That, after the incident she met the accused at her residence and at that time she did not ask him any question. The evidence yielded from crossexamination that on the day of the incident the accused was at his work place and she has informed the incident to him has brought a very severe doubt about the case of the prosecution for the reason as to why the informant will inform the incident to the accused. Further, the position of evidence that after the incident she met the accused at her residence and did not ask any question about the incident also raised question of credibility of the PW 1.
- 10. PW 3 in his evidence deposed that victim is known to him she is 4 years old. That, on 08-10-2016 he heard from family of the accused that Sanjay committed rape on Pramila. Here the evidence is that this PW gathered knowledge of the incident after hearing it from the family members of the accused.

11. PW 6 in his evidence deposed that on 08-10-2016 while he was at Dimow one Pradip Deka informed that, mother of the victim informed him over telephone that, rape was committed on the victim and she sought for advise for next step. That, he being engaged with an essential work, advised to contact nearby 'Asha' worker. On the next day he went to Moranhat P.S. and met accused and victim there. That, he did not enquire about the incident from victim or her mother.

In the cross-examination this PW deposed that he did not tell police that Pradip Deka informed that he was given information that rape was committed on the victim.

12. The PW 7 in his evidence deposed that on 08-10-2016 at night hours while returning home, Jasai, father of the victim informed him that rape was committed on his daughter by accused. That, he did not make an enquiry about the incident.

In the cross-examination this PW deposed that he did not state before police that father of the victim informed him that rape was committed on his daughter by the accused.

- 13. I have considered evidences of PW 3, PW 6 & PW 7 and found that they were informed about the alleged incident by some third parties. The PW 6 & PW 7 did not even tell police that they received information about the incident. I have considered the evidence of PW 3, PW 6 & PW 7 and found that they failed to adduce anything specific, concerning, any of the points for determination.
- 14. The PW 4 in her evidence deposed that on 09-10-2016, she being 'Asha Karmi' was called by the mother of the victim for meeting her daughter who was suffering from lower abdominal pain, headache and fever. That, she went there with her husband and talked with Pramila. That, on asking by her, Pramila Hemram and her mother has told that on the previous day she went to bamboo bushes in the tea garden belonged to the family of the accused for grazing cows and then accused Tiger took her to a jungle area and committed rape. It was told that that her panty was wet after the occurrence. That, she went to tea garden hospital where preliminary treatment was given. Thereafter, victim was taken to Moran State Dispensary where from she was sent to Sonari hospital.

In the cross-examination this PW deposed that while calling her she was informed only regarding lower abdominal pain, headache and fever. That, while giving statement to police she did not state that, Pramila and her mother told her that on the previous day accused took Pramila to jungle area and committed rape. That, victim while telling of commission of rape told her that after opening her panty, accused penetrated his penis into her vegina.

- 15. I have considered the evidence of this PW and found that according to her the alleged victim and her mother told her that the alleged victim went to bamboo bushes for grazing of cows and then the accused took her into a jungle area and committed rape.
- 16. I have considered evidences of the mother of the alleged victim (PW 1) and the evidence of this material witness (PW 4). According to the PW 1, accused took Pramila towards bamboo bushes but according to PW 4 she was told by the PW 1 that Pramila went to bamboo bushes for grazing of cows. Also as per PW 1 her daughter told her that accused raped her. The PW 1 never deposed that the alleged incident took place in a jungle, rather from the evidence of PW 1 it can be gathered that the incident occurred inside the bamboo bushes but as per PW 4 the PW 1 told her that accused took Pramila to a jungle from the bamboo bushes and raped her. According to PW 1, the place of occurrence is a bamboo bush where the victim was taken by the accused but according to PW 4 she was told by the PW 1 that accused took Pramila to a jungle from bamboo bushes where she went for grazing of cows.
- 17. At this stage, I have considered the evidence of the PW 5 who deposed that on 08-10-2016 at 7:00 pm Pramila told her that while she went to bamboo bushes for grazing cows, accused took her to jungle and committed rape. Also according to PW 5 the mother (PW 1) also told similarly. If we scrutinized evidences of PW 1, PW 4 & PW 5 then we will find that according to PW 1 the place of alleged incident is a bamboo bush and according to PW 4 & PW 5 it was told that the place of occurrence is a jungle near the bamboo bush. This aspect has raised doubt over the prosecution case concerning place of alleged incident.
- 18. PW 8 *i.e.* Dr. Pallav Gogoi who examined the alleged victim Pramila Hemram deposed in evidence that on 10-10-2016 while he was working at Sonari Sub-

Divisional Civil Hospital at 4:35 pm he examined Pramila Hemram in connection with Moranhat P.S. case no. 127/16. The PW 8 deposed in evidence that on examination of genitalia he found labia majora and minora normal, vegina normal, hymen intact. Injury none. That, ultrasonography is normal in study (non-pregnant). The PW 8 deposed in his opinion that the age of the subject is 5-8 years. She is non-pregnant and there is no sign of sexual intercourse or injury.

In the cross-examination this PW deposed that considering the age of the victim, had there been any forceful sexual intercourse, mark of violence should have remain there.

- 19. At this stage, I have considered the evidences on record particularly evidence of the PW 1 that her daughter/alleged victim deposed that accused pushed his penis into her and evidence of the doctor that the hymen of the alleged victim was found to be intact at the time of the examination after the incident. The cross-examination of the PW 8 yielded that there is no sign of mark of violence. Here the medical evidences failed to support the case of the prosecution concerning penetrative sexual assault upon the alleged victim Pramila, as, if there would have been any penetration, the hymen may not have been intact.
- 20. I have considered evidences of the I.O. and found that witness Rekha Tapna (PW 4) did not state before him that Pramila and her mother told her that accused Tiger after taking Pramila to jungle area committed rape on her.
- 21. If we scrutinize evidences on record yielded from the cross-examination and examination of PWs we will find the following points
 - i) In this case the medical evidence has failed to support the case of the prosecution, evidences of examined PWs.
 - ii) There are unignorable contradictions between the evidences of PW 1, PW4 & PW 5 concerning the place of alleged incident.
 - iii) The evidence of PW 1 is self-contradictory. In one hand she deposed that accused committed rape on her daughter and on the other hand she deposed that on the day of incident accused was at his place of work and she informed the incident to him.

Page **8** of **9**

iv) The other witnesses i.e. PW 3, PW 6 & PW 7 are having no specific

knowledge about the incident. They were only informed.

22. I have considered those above mentioned points and found that those have

surely disproved the prosecution case, as severe doubt has raised through those

points.

23. Under the above circumstances in presence of evidences as discussed above,

in opinion of this court, the accused has disproved the case of the prosecution for

which he is acquitted form the offences he is facing trial. He is set at liberty

forthwith. Bail bond executed by the accused is extended as per provision 437(A)

Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of

Cr.P.C.

Given under my hand and seal of this court on this the 29th day of May, 2019.

(S. I. Rahman) Additional Sessions Judge : Sonari

Charaideo

<u>Appendix</u>

Prosecution Witnesses.

- Sl. 1---- Prosecution Witness 1 --- Gita Hemramb
- Sl. 2---- Prosecution Witness 2 --- Alleged victim
- Sl. 3---- Prosecution Witness 3 --- Dipak Lama
- Sl. 4---- Prosecution Witness 4 --- Smti. Rekha Topno
- Sl. 5---- Prosecution Witness 5 --- Smti. Mina Bhengra
- SI. 6---- Prosecution Witness 6 --- Rantan Tanti
- Sl. 7---- Prosecution Witness 7 --- Semual Topno
- Sl. 8---- Prosecution Witness 8 --- Dr. Pallab Gogoi
- Sl. 9---- Prosecution Witness 9 --- Suchen Chandra Bora

Prosecution Exhibits. Exhibit 1. Doctor Advice slip

Exhibit 2 Medical report.

Exhibit 2(1) signature of the PW 8.

Exhibit 3 FIR.

Exhibit 3(1) signature of the then O/C.

Exhibit 4 Sketch map.

Exhibit 4(1) signature of PW 9.

Exhibit 5 Statement of the victim.

Exhibit 6 Charge-sheet.

Exhibit 6(1) signature of PW 9

Defence witness.

Nil

Defence Exhibit.

Nil

(S. I. Rahman) Additional Sessions Judge : Sonari Charaideo