IN THE COURT OF THE SESSIONS JUDGE: : KAMRUP: : AMINGAON

District: Kamrup, Amingaon

Present: A.F.A. Bora

Special Judge, Kamrup, Amingaon

Special Sessions Case No.16/2014

Under section 6 of Protection of Children from Sexual Offences, Act, 2012

State of Assam

-Versus-

Sri Tarani Kanta Rabha

S/o- Late Sukumar Rabha

Vill- Derima

P.S- Boko

Dist- Kamrup, Assam Accused

Appearance:

Smt. P. Deka, Public Prosecutor.....For the State

H. Khakhlary, B.Rabha & L.Rabha.....For the accused

Date of charge- 05.01.2015

Date of evidence- 02.03.15, 12.03.15, 25.05.15, 01.08.15

08.08.16, 03.10.16, 15.03.17, 31.08.17

17.01.18

Date of Argument: - 27.03.2018, 10.04.2018

JUDGMENT

- 1) The fact of the case briefly narrating is that one Smti. Kaushalya Rabha lodged an FIR at Boko Police station on 02.10.2014 against one Tarani Kanta Rabha (here-in-after called the accused) alleging interalia that prosecutrix is her daughter aged about 15 years and at that time she was reading in class X and she now became 4 months pregnant. According to informant, when she asked her daughter about her pregnancy, then she came to know that in the month of May, 2014 on a day at around 6-30/7 P.M. while she was busy in her cooking, her daughter was raped by the accused while she was reading in her room. It is alleged further that accused secretly entered into the house and gagged the mouth of the prosecutrix and thereafter committed rape on her for which she became pregnant. It is further alleged that accused gave threatening for life for which prosecutrix has not disclosed the fact to anybody.
- 2) The aforesaid FIR was registered as Boko P.S. Case No. 591/2014 u/s 6 of the Protection of Children from Sexual Offences Act, 2012 (here-in-after referred as POCSO Act) and Police investigated into the matter. During investigation police prepared sketch map of the place of incident indicating house of the informant and the house compound. During investigation the prosecutrix was produced before a Magistrate and her statement was recorded by the Magistrate. She was medically examined.
- 3) On completion of investigation police submitted charge sheet against the accused u/s 6 of the POCSO Act. Hence this case.
- 4) During trial the accused appeared before this Court to whom copies were furnished and after hearing both sides charge u/s 6 of the POCSO Act was framed and offence read over to which accused pleaded not guilty.

5) **POINT FOR DETERMINATION**

Whether the accused person in the month of May, 2014 at around 6-30 P.M. at village Dirima, committed aggravated penetrative sexual intercourse upon Nikumoni Rabha, a female child below 16 years of age by penetrating his male organ into her private part and made the child pregnant as a consequence of sexual intercourse with her and thereby committed an offence u/s 5(j)(ii) of the Protection of Children from Sexual Offence Act, 2012 which is punishable u/s 6 of the said Act?

DISCUSSION AND REASONS THEREOF:

- 6) In the present case prosecution examined altogether 8 witnesses including the Medical Officer and Investigating Officer whereas defence examined two witnesses in support of the plea that at the relevant time accused was not present at the place of occurrence. To arrive at a decision let me first scrutinize the oral evidence of the witnesses to find out whether the offence brought by the prosecution is conclusive in nature and has established a case against the accused u/s 6 of the POCSO Act as alleged.
- 7) At first let me concentrate upon the testimony of P.W. 1 (the prosecutrix) who claimed her age as 18 years of age at the time of her examination before the Court and claimed herself to be of 15 years of age at the relevant time of occurrence. She stated very clearly that while she was studying in her room, her uncle accused Tarani Kanta Rabha entered into her room with the pretext for charging his mobile and thereafter gagged her mouth, removed her under wear and after removing his gamosa (wearing towel) from his waist forcibly committed rape on her. She very categorically stated that she tried to

scream, but could not succeed and at that time her mother was in the kitchen and father was in her house. According to her, her parents did not see the aforesaid incident which took place in the month of May, 2014. According to P.W. 1 she has not told to her parents about the incident as accused threatened her and as a result of such incident she became pregnant. She supported the prosecution case stating the fact that her mother lodged FIR on 2nd October, 2014 and by that time she was already pregnant. She deposed that her statement was recorded by police and she testified her statement recorded by a Magistrate as Ext. 1 and Ext. 1(1) and 1(2) as her signatures. She further testified Ext. 2 the medical report and Ext. 2(1) as her signature. According to her she was studying in class X and at the time of recording her statement she was appearing HSLC examination. She further stated that her pregnancy was aborted.

- 8) This witness was cross examined by the defence where suggestion has been put to this witness that no forceful intercourse was committed upon her and accused did not threaten her which she denied categorically. The defence could not assail her testimony and P.W. 1 is found confident enough in implicating the accused person in the alleged incident of rape committed upon a girl of the age of 15 years.
- 9) Next to P.W. 1 is Smti. Kusholya Rabha (P.W. 2) who is the informant and mother of the victim girl. She testified Ext. 3 as FIR and according to her the accused entered into the study room of her daughter for charging his mobile phone and thereafter he gagged the mouth of the prosecutrix and committed rape on her and as a result her daughter became pregnant. It is stated by P.W. 2 that her daughter had stopped regular monthly cycle for which she suspected and on query when her uncle Basudev Rabha started asking prosecutrix, then she started crying and disclosed the entire incident to them. It is further alleged that the whole incident was not reported to them for a long time by her daughter as she was threatened and for that after the incident P.W. 2 had lodged FIR. In this way the prosecution case started and

- during cross examination P.W. 2 admitted that she did not know the exact date of incident. Admittedly, the reason for delay in filing the ejahar has not been specifically mentioned. The defence further tried to assail her testimony but could not succeed and P.W. 2 is found confident enough in implicating the accused.
- 10) P.W. 3 is Bhismadeb Rabha who got information from the mother of the prosecutrix about the incident. Then he asked the prosecutrix i.e. her sister in law by whom she became pregnant, and on repeated query and pursuance proscutrix replied that she became pregnant for the act of the accused Tarani Kanta Rabha. He further narrated the whole story how the accused gagged her mouth while prosecutrix was reading in her room and laid her in the bed and committed rape upon her forcibly as replied to him by the victim.
- 11) He further narrated the story as reported to him by the prosecutrix that at the relevant time the brother of the prosecutrix was watching TV in a separate room and mother was in the kitchen. He further stated that the parents were living in another room for which it was not audible from the part house in which the incident took place. This witness has given a reason stating that while he asked the prosecutrix why she had not disclosed the incident for a long period of time, then she replied that accused had threatened to kill her if she disclosed the fact to anybody. P.W. 3 has further stated that he called the parents of the prosecutrix and narrated the entire incident as stated to him by the victim. He further stated that before lodging the ejahar he tried for settlement at the village meeting and incident was informed to the village Headman, but there was flood in the village for which the village Mel could not be held and thereafter the mother of the prosecutrix lodged the FIR. During cross examination P.W. 3 admitted that the date of incident is not known to him. His cross examination reveals no such fact to disbelieve the entire happenings as because the person having no enmity will give such a detail fact about the incident reported to him by the victim.

- 12) Similarly, P.W. 4 Hemanta Kr. Rabha is the brother of the prosecutrix who deposed that prosecutrix being 15 years of age studying in class X became four months pregnant. He corroborated the story as like P.W. 3 and like P.W. 1 and P.W. 2. During cross examination the defence has failed to assail his version. What P.W. 4 has stated, is found consistent with the fact that on disclosing the entire incident by the prosecutrix to her mother, the prosecution case has been instituted by lodging an FIR by the mother of the prosecutrix and P.W. 4 out of shame has not asked anything to her sister which is found very natural and believable.
- 13) P.W. 5 Khargeswar Rabha is a co-villager who corroborated the entire story as stated by P.W. 2 and P.W. 4 who claimed that he heard from the prosecutrix itself that she was forcibly raped by accused. He further added with a word that accused is not a man of good character and before this incident he was involved with similar incident with other girls and there was a village Mel in this regard. The testimony of P.W. 5 is found consistent with the prosecution story and defence has failed to assail his version by any means to establish any other story than that which has been instituted by the prosecution. This witness is a reported witness and his evidence is not direct to the alleged act of sexual assault.
- 14) In the instant case P.W. 6 is the Medical Officer Dr. Richa Pandey. According to her she examined the prosecutrix on 3.10.2014 in connection with Boko P.S. Case No. 591/14. Her testimony is formal in nature and she had narrated in her report the entire fact regarding genital examination which read as below-
 - (1) Genital organs- healthy.
 - (2) Vulva- Both labia majora and minora exposed on abduction of thighs.
- (3)Hymen- Old tear present at 3'O clock and 7'O clock and 9'O clock position.

- (4) Vagina and cervix -healthy.
- (5) Uterus Palpable per abdomen at the level of umbilicus, appro-Priate 24 weeks.
- (6) Evidence of venereal disease not detected clinically.
- (7) Vaginal swab collected from posterior fornix.
- (8) Injury on body- not detected.
- (9) Evidence of struggle or stain on wearing garments-not detected.
- (10) Mental condition at the time of examination- no abnormality

 Detected.
- (11) Co-operation and behavior- co-operative.
- (12) Intelligence and memory average.
- (13) Gait normal.
- (14) Velocit kit test- gave positive result.
- 15) The Radiological examination report has also been mentioned in the report submitted by the Medical Officer which is of following nature.
 - (1) X-ray- Wrist, elbow and shoulder joint- epiphyseal union of bones is completed. However, in our opinion fusion around wrist joint is not complete.
 - (2) X-ray of pelvic bones- Epiphyseal union of bones not completed.
- 16) The opinion of the doctor is as below-
 - On the basis of physical examination, radiological and laboratory investigation on the prosecutrix, we are of the opinion that-

- (1) There is no evidence of recent sexual intercourse on her person at the time of examination.
- (2) She is pregnant at the time of examination- gestational age being appropriate 25 weeks 1 day.
- (3) There is no injury detected on her person.
- (4) Her age is above 16 years and below 18 years at the time of examination.
- 17) She testified Ext. 2 as her report where from it can be determined that at the time of examination of the prosecutrix by the doctor she was carrying a pregnancy of 25 weeks 1 day and is a girl of the age in between 16 to 18 years. I find no reason to disbelieve the version of the expert more so there is no such contradictory evidence form the defence that prosecutrix was not the age of not below 18 years at the relevant time of incident.
- 18) In this way the prosecution evidence is found consistent and corroborative of the fact that prosecutrix was detected having pregnancy of 25 weeks while the FIR was lodged and it was the prosecutrix who made a very clear statement that her pregnancy was caused by the accused and none else.
- 19) In the present case prosecution examined P.W. 7 Smti. Puja Devi, a Judicial Magistrate who examined the victim and recorded her statement. She testified the statement as Ext. 1 and Ext. 1(3) as her signature.
- 20) Lastly, P.W. 8 is Sri Jatindra Nath Deva Sarma, the I/O. He is a formal official witness and testified the FIR and other related documents including the sketch map as Ext. 6 which I have taken note of where from it reveals that kitchen house is at a little distance behind the room of the prosecutrix where the alleged incident took place. There is no inconsistency and irregularity in the testimony of P.W. 8 who submitted Ext. 8 as the charge sheet against the accused. During cross examination no contradictory statement is found established by the

defence and no further discussion is necessary in the testimony of P.W.8.

- 21) Having such evidence of the prosecution the defence examined D.W. 1 Sri Kohiram Rabha who is a co-villager and deposed that at the relevant time accused was with him at Nangal, Meghalaya where they were working in a coal mine. But during cross examination he admitted that they have not submitted any identity card or other documents to prove the fact that they were in the coal mine at Nangal, Meghalaya. Similarly Joydeb Rabha D.W. 2 is a co-villager who called the accused as Dada. According to him in the month of May, 2014 he was working with the accused and D.W. 1 in a coal mine at Meghalaya. During cross examination this witness also admitted the fact that they have not submitted any documents to prove the fact that they were working under any contractor at Nangal, Meghalaya.
- 22) The above plea of the accused found not satisfactory and believable to discard the consistent version of the prosecutrix ,her parents and other related witnesses.
- 23) Here I would like to place the definition of Section 5-sub section (j) (ii) of the POCSO Act for convenience of further discussion which read as under-

"Aggravated penetrative sexual assault- whoever commits penetrative sexual assault on a child, which in case of female child make the child pregnant as a consequence of sexual assault is called aggravated penetrative sexual assault."

24) The punishment is provided u/s 6 of the Act and it is now necessary to determine whether the act committed by the accused resulted in making a child pregnant as a consequence of sexual assault. If we go minutely to the version of the prosecutrix, it appears that accused taking advantage of the relationship with the parents and his influence over the minor girl committed sexual assault which has been very clearly narrated by the prosecutrix in her statement. If the accused is

called as uncle who entered into the reading room of the prosecutrix with a pretext to charge his mobile and thereafter he committed rape on the victim being a co-villager and a man trusted by the family members is an act aggressive one. As per definition of the act the aforesaid sexual act or assault became aggravated penetrative sexual assault as it has been proved by the prosecution that the victim became pregnant as a result of sexual act committed by the accused.

- 25) If we look into the evidence of prosecutrix and chronological happenings after discontinuation of menstrual cycle of the victim, it is found believable because a villager during flood hours having no alternative and failing to call any village Mel had directly gone to police station to lodge FIR narrating the incident of four months old happenings which was kept concealed by the girl for the reason of threatening of the accused. But at the same time it is very much natural and common that a woman or a child at this stage will definitely not willing to disclose the incident to anybody else, even she may not dare to disclose the same to her parents.
 - 26) Here, we can take reference of a reported case law **Rajendra @ Raju Vs. State of Himachal Pradesh.** In the aforesaid case law, it has been observed in Para -14 of the judgment which is quoted as below :-
 - " In Sadashiv Ramrao Hadbe, this Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful while accepting the testimony when the entire case is improbable and unlikely to have happened. This is what has been stated:

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version

given by the prosecutrix is unsupported by ay medical evidence or the whole surrounding circumstances are highly improbable and believable the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

In the aforesaid case the Hon'ble Apex Court at para 18 of the Judgment referring a case of Radhu where the evidence of the prosecutrix was found full of discrepancies and not worthy of credence. The medical evidence also did not corroborate the case of sexual intercourse or rape. In Radhu the Hon'ble court reiterated the legal position which read as under:

"6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a "rape", if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent."

27) From the discussion made above, it becomes established principle of law that sole testimony of the victim may be sufficient for convicting an accused without corroboration. But, that too

considering the fact that entire case is not improbable and unlikely to happen.

- In the aforesaid case law, the Hon'ble Apex Court made a remark that in the context of Indian culture, a woman victim of sexual aggression would rather suffer silently then to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime she could not blame anyone but the real culprit. It has been further narrated in para 21 of the aforesaid Judgment that while appreciating the evidence of the prosecutrix the Court's must always keeping mind that no self- respecting woman put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix.
- For the forgoing discussion and reasons thereof the delay in lodging FIR in such a case does not give any benefit for the accused or it does not make a point that such delay has been caused to concoct a story against the accused for any illegal gain or for malice. Such type of delay in lodging FIR and disclosing the fact by the victim is common in society specially among the poor and illiterate villagers, for that it cannot be said that delay is one of the reason to disbelieve the entire story narrated by a girl of the age of 16 years who had suffered traumatic situation for the reason of aggravated sexual assault committed upon her by the accused resulting her pregnancy.
- 30) Here I am constrained to hold a view that prosecution has succeeded in proving a case of aggravated penetrative sexual assault on a female child who as a result of such act became

pregnant. There is no other view acceptable for bearing a female child pregnant except for the penetrative sexual assault committed by the accused upon the victim. The medical report and testimony of P.W. 6 is found corroborative of the statement made by the prosecutrix.

- 31) In the result it is held that prosecution has succeeded in proving a case u/s 6 of the POCSO Act against the accused beyond all reasonable doubt and accordingly, the accused is convicted.
- 32) Before awarding sentences, the accused is heard on the quantum of sentences. He submits that he is a married person having liability of wife and a daughter. He further submits that he is a daily wage earner and only bread earner of his family. The socio-economic condition, age, antecedent etc. of the offender is considered before awarding sentences.
- 33) Considering all aspects of the matter, it appears that offence u/s 6 of the POCSO Act provides punishment for rigorous imprisonment not less than 10 years which may extend to imprisonment for life and shall also liable to fine. As such in the present case the minimum punishment prescribed in the law has been awarded and accordingly accused is convicted and sentenced to undergo RI for 10 (ten) years and also fine of Rs. 5000/- I/D RI for two months.
- 34) Previous detention, if any be set off under provisions of section 428 of Cr.P.C.
- 35) A recommendation has been made u/s 357 A (2) of Cr.P.C. and the matter be referred to the Member Secretary, State Legal Service Authority, Assam as District Legal Service Authority is not constituted at Kamrup, Amingaon by sending a copy of this order along with the address of the prosecutrix in a separate envelop for the purpose of determination of compensation under Victim Compensation Scheme as per provisions of section 357A(5) of Cr.P.C.

A free copy of this judgment shall be given to the accused. Another copy of this order and judgment shall be sent to the District Magistrate, Kamrup, Amingaon in compliance with section 365 Cr.P.C.

Given under my hand and seal of this Court on this 24^{th} day of April, 2018.

Special Judge Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

Typed by Stenographer B.Bhattacharjya.

Appendix

Prosecution witnesses:

- P.W. 1- Prosecutrix
- P.W. 2- Smti. Kusholya Rabha
- P.W. 3- Sri Bhismadeb Rabha
- P.W. 4- Sri Hemanta Kumar Rabha
- P.W. 5 Sri Khargeswar Rabha
- P.W. 6- Dr. Richa Pandey
- P.W.7 Smti. Puja Devi
- P.W.8- Sri Jatindra Nath Deva Sarma

Defence witnesses:

- D.W. 1- Sri Kohiram Rabha
- D.W. 2- Sri Joydeb Rabha

Prosecution Exihibits

- Ext. 1- 164 Cr.P.C. statement
- Ext. 2- Medical report
- Ext. 3- FIR
- Ext. 4 Forwarding for medical report
- Ext. 5- Printed form of FIR
- Ext. 6- Sketch map
- Ext. 7 –Forwarding for medical examination
- Ext. 8- Charge sheet

Special Judge Kamrup, Amingaon