

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
Special Judge,
Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 13 (DH) 2018.

U/S 4 of POCSO Act.

The State of Assam

- Versus -

Shri Dipchand Das,
S/O Late Khargeswar Das,
Vill. Akajan Santipur,
P.S. Silapathar,
Dist.- Dhemaji.Accused

Appearance:

Shri A. Fogla,
Public ProsecutorFor the State
Shri P. Neog, AdvocateFor the Accused

Dates of prosecution evidence :27-06-2018,25-07-2018,20-08-2018,

10-10-2018, 03-01-2019.

Date of argument : 22-04-2019.

Date of Judgment : 30-04-2019.

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JUDGMENT

1. The prosecution case, in brief, is that on 27-01-2018 complainant- Smt. Chandra Prova Das lodged an ejahar with the Silapathar Police Station alleging interalia that accused Dipson Das had illicit sexual intercourse with her daughter Smti 'X' and as a result Smti 'X', became pregnant. It is also stated in the ejahar that the accused admitted the above fact in presence of the villagers.
2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person- Shri Dipchand Das u/s 4 of POCSO Act.
3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 4 of POCSO Act against accused- Dipchand Das. The charge was read-over and explained to the accused person to which the pleaded not guilty. The prosecution, in order to prove its case, examined eight witnesses. At the closure of the prosecution evidence statements of the accused persons were recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.
4. **Point for determination :**

(1) That you, about a few months back from the date of filing the ejahar on 27-01-2018 at Village-Akajan Santipur Gaon under Silapathar Police Station, committed penetrative sexual assault on your own daughter Smti 'X' and thereby you committed an offence punishable u/s 4 of POCSO Act.
5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

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6. **PW1** Smti Chandraprabha Das stated that she is the complainant. She knows the accused. She knows the victim 'X'. The incident took place in the month of January 2018. About 6 months before the incident victim got married with a person. Accordingly, the victim became pregnant. But pregnancy was terminated. Thereafter victim's father got her back home as her husband was already married and she was not happy with him. She stayed with her parents for about 3-4 months. One day victim's mother came to her and told her that her daughter was not having menstruation and she asked her if she had any instrument to test pregnancy of her daughter. Next day she did pregnancy test on the victim and found that victim conceived. On being asked as to who was responsible for her pregnancy victim's mother told her that her father made her pregnant. She informed the matter to her neighbors and they questioned victim's father and victim's father confessed that he made her daughter pregnant. Then the accused was handed over to Silapathar police. She lodged complaint at Silapathar police station. At the time of incident the victim was aged about 15 years. Ext.1 is ejahar and Ext.1(1) is hersignature. Ext.2 is her 164 Cr.CP statement and Ext.2(1) and Ext.2 (2) are hersignatures.

In cross-examination PW1 stated that the accused is related to her. She does not know with whom she (victim) was married. She denied the defence suggestion that the victim did not become pregnant and while staying in her husband's house and the pregnancy was not terminated. She denied that she did not state before the IO that the victim became pregnant and her pregnancy was terminated. She denied that she did not state before police that after termination of the pregnancy victim was got to the house of her parents. She did not state before the IO that one day victim's mother came to her and told her that her daughter was not having menstruation and she asked her if she had any instrument to test pregnancy of her daughter. Next day she did pregnancy test on the victim and found that victim conceived. She denied that on being asked as to who was responsible for her

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pregnancy, victim's mother told her that her father made her pregnant. She denied that the victim got married with a person and then she became pregnant. Shedenied that she has given false evidence against the police. She did not make any enquiry regarding age of the victim as per age certificate.

7. **PW2** Sri Banamali Kakati stated that he knows the complainant Chandraprabha Das. He knows the accused. He also knows the victim 'X'. The incident took place about 3/4 months back. There was a meeting in the village where he was present. In the said meeting accused confessed before the villagers present that he had sexual intercourse with his daughter and made her pregnant. Then the villagers handed him over to police. He gave statement before Magistrate u/s 164 Cr.PC. Ext.3 is the statement u/s 164 Cr.PC. Ext.3(1) and Ext.3(2) are his signatures.

In cross-examination PW2 stated that Victim was married at the time of occurrence. She came to her parent's house about 3 months before the occurrence and stayed there. He does not know whether the victim was already pregnant before the incident. She denied that the accused did not confess before the villagers present that he had sexual intercourse with his daughter and made her pregnant.

8. **PW3** Smt. 'X' (victim) stated thatshe knows the complainant. Accused Dipchand Das is her father. About one year before the incident she got married with a person. However, she left her matrimonial home as she could not continue conjugal life. While staying at her parents' house she was not having periods and it was circulated in the village that she had some illicit affair with the accused (father). Her father has not physically abused her. It was a rumour being circulated in the village and she was compelled to file case against her father. She gave statement before Magistrate as tutored by village people. Ext.4 is the her statement u/s 164 Cr.PC. Ext.4(1) and Ext.4(2) are her signatures.

In cross-examination the victim stated that her father has never subjected her to sexual assault. She did not become pregnant. To her, it was

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a conspiracy and her father has been dragged into the matter without any offence.

9. **PW4** Smti Punya Das stated that she knows the complainant. Accused Dipsand Das is her husband. Victim Smti 'X' is her daughter. The incident took place about 6 months back before the incident. About six months before filing complaint this case her daughter got married with a person. She stayed with her husband in the matrimonial home for about two months and she became pregnant. But, the pregnancy was terminated. The person with whom her daughter got married had already been married as such her husband got her daughter back home. While staying in their house, her husband had sexual intercourse with her daughter. They came to know about the illicit affair when her daughter became pregnant again. On being asked her daughter disclosed that her father had sexual intercourse with her. Her husband also confessed before the villagers that he had had sexual intercourse with his daughter. In this matter Smti Chandraprabha Saikia took the lead to unearth the incident. And Chandraprabha Saikia also lodged complaint at the police station. Police examined her u/s 161 Cr.PC and also produced her before Magistrate and she gave her statement u/s 164 Cr.PC. Ext.5 is the statement u/s 164 Cr.PC. She put thumb impression on Ext.5 as Ext.5(1).

In cross-examination PW3 stated that though she has stated that her daughter terminated her pregnancy, she developed at her matrimonial home she had no direct knowledge of such termination of pregnancy. She denied that she has not seen the act of sexual intercourse between her husband and her daughter with her own eyes. It is a fact that she has not stated before police and Magistrate that she saw her husband and her daughter involving sexual activity. She denied that she have brought allegation against her husband on suspicion.

10. **PW5 Niranjan Mahanta** stated that he knows the complainant and accused. He also know the victim Smti 'X'. The incident took place about

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6 months ago. The victim became pregnant while staying in her parent's house. Then the villagers noticed the pregnancy although the victim did not disclose about it. Thereafter, on questioning by the villagers the victim disclosed that her father had sexual intercourse with her. The villagers also questioned the accused and he confessed that he had sexual intercourse with his daughter. Then the villagers decided to lodge complaint with police. Police examined him u/s 161 Cr.PC and also produced him before Magistrate and he gave statement u/s 164 Cr.PC. Ext.6 is statement u/s 164 Cr.PC and Ext.6(1) and Ext.6(2) are his signatures.

In cross-examination PW5 stated that he knows that the victim got married with a person and then she left her husband's company and stayed in her parent's house. He also knows that while she was staying with her husband she became pregnant. He had not seen the act of sexual intercourse between accused and his daughter. From the villagers he came to know about the incident.

11. **PW6** Rupam Das stated that he knows the complainant and accused. He also knows the victim girl. The incident took place about 6 months ago. The victim became pregnant while staying in her parent's house. Then the villagers noticed the pregnancy although the victim did not disclose about it. Thereafter, on questioning by the villagers the victim disclosed that her father had sexual intercourse with her. The villagers also questioned the accused and he confessed that he had sexual intercourse with his daughter. Then the villagers decided to lodge complaint with police. Police examined him u/s 161 Cr.PC and also produced him before Magistrate and he gave statement u/s 164 Cr.PC. Ext.7 is statement u/s 164 Cr.PC and Ext.7(1) is his signature.

In cross-examination PW6 stated that he knows that the victim got married with a person and then she left her husband's company and stayed in her parent's house. He had not seen the act of sexual

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intercourse between accused and his daughter. From the villagers he came to know about the incident.

12. **PW7** Dr. Khagen Doley stated that on 31-01-2018 he was posted at Dhemaji Civil Hospital as Senior Medical Officer. On that day on police requisition vide PS Case NO.43/2018 u/s 4 of POCSO Act, he examined Smti 'X' aged about 16 years. She was identified and escorted by WPC Jonaki Chetry. On examination he found as follows:

History of Sexual assault- 4 months back and history of amenorrhea 4 months. On examination abdominal lump is found and age 16 weeks pregnant uterus size. PV not allowed to examine.

Secondary sexual character poorly developed.

Opinion- No signs of forceful sexual act and she is advised to consult Gynochologist as soon as possible and ultrasound abdomen was advised and X-Ray of No.1 wrist, No.2 pelvic, No.3 shoulder.

Ext.8 is the medical report and Ext.8(1) is his signature.

In cross -examination Doctor stated that X-Ray was advised for age determination but he did not receive actual report at the time of my submission of report. He did not examine the private part of the victim as she was pregnant.

13. **PW8** Kudrat Ali stated that on 27-01-2018 He was posted at Silapathar PS as Attached Officer. On that day OC received an ejahar from Smti- Chandra Prabha Das and registered a case vide Silapathar PS Case No.43/2018 u/s 4 of POCSO Act. and entrusted him for investigation. Complainant and other witnesses were examined at the PS. Local public apprehended the accused and handed over to him. He formally arrested the accused and sent him to court. He visited the PO and drew sketch map. He recorded statement of witnesses u/s 161 Cr.PC at the PO. He produced the victim and two other witnesses before Magistrate and their statements were recorded u/s 164 Cr.PC. He seized one school certificate of the victim and he collected the medical report of the victim. After completion of investigation,

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he I filed charge-sheet against the accused Dipchand Das u/s 4 of POCSO Act. Ext.9 is the sketch map asnd Ext.9(1) is his signature. Ext.10 is the seizure list and Ext.10(1) is his signature. Paper Ext.1 is the age certificate issued by concerned PHC and seized by him. Ext.11 is the Charge sheet and Ext.11(1) is his signature.

In cross- examination PW4 has not stated before him that she saw the accused and the victim having sexual intercourse at the relevant time. He denied the defence suggestion that the victim who was married to a man got pregnant from her husband at the relevant time. He has not obtained pregnancy test report or ultrasound report regarding the allege pregnancy of the victim from doctor.

Appreciation of Evidence :

14. From the discussion of the evidence on record it appears that prosecution has examined the victim and the complainant and other witnesses in support of its case. Pw1 is the complainant. In her evidence she stated that victim's mother told her about the victim being impregnated by her father. Mother of the victim has been examined as Pw4. In her evidence she stated that her daughter was married to a person. After the marriage her daughter stayed with her husband for about two months and she became pregnant. However her daughter left matrimonial home and started to live in her house. Pw4 also stated that victim's pregnancy from her husband was terminated. But again she became pregnant and it was discovered that victim's father had illicit sexual intercourse with her daughter.

15. Now, let me examine the evidence of the victim has been examined as Pw3. In her evidence Pw3 stated that she got married with a person but she could not continue her conjugal life and she left her matrimonial home and started staying at her parent's house. She also categorically stated that her father never had sexual intercourse with her. Further she stated that rumoured was being spread in the village and the villagers compelled her lodge complaint against her father.

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16. Other non-official witnesses also spoke that the accused confessed that he committed sexual intercourse with his daughter. The doctor/MO has been examined as PW7 on examination of the victim found her 16 months pregnant.

17. I have carefully considered the evidence on record. From the evidence it is found that though prosecution relied upon the prosecution evidence to show that the accused is involved in the commission of the alleged offence the ,victim is not supportive, and she has denied involvement of the accused in the commission of the alleged offence.

18. The victim being the key witness, in her evidence on during trial, has not implicated the accused and thereby creating a doubt over prosecution case.

19. In view of what has been discussed above I find prosecution has failed to prove the charge u/s 4 of POCSO Act beyond all reasonable doubt.

O R D E R:

20. In the result I find the accused **Dipchand Das** not guilty u/s 4 of POCSO Act. Accordingly he is acquitted of the charge leveled against him. Set him at liberty forthwith.

21. Judgment is pronounced in open court.

22. Given under my hand and seal of this Court on this the **30th** day of April 2019.

30/4/2019
(S. Das)

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