IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 10 of 2017 U/S 6 of POCSO Act. (Arising out of Charaipung P.S. Case No. 26/2016)

State of Assam

-Vs-

Sri Ramu Gowalla Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P. P.

For the accused : Sri D. M. Neog, Advocate

(Legal Aid Counsel)

Date of framing Charge : 27.03.2017

Dates of Evidence : 17.05.2017, 14.06.2017, 23.10.2017,

23.06.2017

 Date of S/D
 :
 01.12.2017

 Date of Argument
 :
 01.12.2017

 Date of Judgment
 :
 11.12.2017

JUDGMENT

- 1. Prosecution case, in brief, is that on 03.10.2016, one Smt. Meera Baghowar lodged an FIR with O/C, Charaipung Police Station alleging, inter alia, that about two months back, accused Ramu, by enticing her daughter victim 'J' (named withheld) took her to jungle and committed rape on her.
- 2. On receipt of the FIR, Charaipung P.S. Case No. 26/2016 U/S 4 of POCSO Act, 2012 was registered and investigated into. During investigation, accused was arrested and produced him before the court for judicial custody. The victim was medically examined and recorded her statement in the court

U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 4 of POCSO Act, 2012 against accused person.

- 3. On receipt of the charge sheet, accused was provided with the services of Legal Aid Counsel, copy was furnished to him, and after hearing both the sides, vide order dated 27.03.2017 framed the charge U/S 6 of POCSO Act, 2012 against the accused Ramu Gowalla to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined eight witnesses including M.O. and I.O.
- 4. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. D. M. Neog, learned Legal Aid 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 'J' on the date of alleged incident?
 - (II) Whether prior to two months of filing FIR on 03.10.2016, accused has committed aggravated penetrative sexual assault on the victim 'J'?

DECISION AND REASONS THEREOF

PW-1 Smt. Meera Baghowar, mother of the victim, in her evidence deposed that on 03.10.2016, victim was aged about 12-13 years. She did not go to school. On stopping her menstruation, on asking, she told that accused Ram has took her to near new police station area and committed misdeed with her. She told her that accused did the misdeed twice. After knowing this, after about a week on being asked by mahila samity, she lodged the FIR at Charaipung PS. In her cross-examination she deposed that she has three sons and two daughter. Her elder son is about 20 years of age. Victim J is next to

him. Victim J worked in the Bagan of Naren Sherowar. On those days, she come in touch with the accused Ramu. On asking initially, she did not disclose the cause of her stoppage of menstruation. She has to filed the case on the insistence of Mahila Samity. Victim J informed the matter of committing misdeed initially to Mahla Samity Mamber Pramanti Hare and she informed her about the misdeed. She cannot say the correct age of his daughter. She denied that victim was aged above 18 years.

8. PW-2 victim J in her evidence deposed that about 8-9 months back, in one Saturday, while she came to nearby shop with her friends, accused called her to go for visit and took her to Bagan Jungle area. After taking there, accused opened her cloth, laid her on ground and committed rape on her. She tried to restrain him but accused did not bother for that. After committing misdeed he left the place. Accused also restrained her from informing the matter to her family members. After about a week the accused again took her to another place and committed misdeed with her. After 9 days, sister of Nareswar asked her about her menstruation and she replied that sometime it got delayed. She informed the matter to Mahila Samity. They asked her in front of her parents. Only then she disclosed that accused has committed rape on her. On this her mother has scolded her and filed this case. Police got her medically examined. Police also took her to court and she gave statement in court. In her cross-examination she admitted that she cannot say the name of the friends gone with her to the shop. She and accused work in the Bagan of Naren Shreowar for about a week. Her brother also works in the said Bagan. Accused took her about ½ KM inside the Bagan. Neighbouring people has seen her in going with the accused. She has stated her age as informed by Mahila Samity members. On being pressed by Mahila Samity members, she had to disclose the incident and name of the accused. She denied that that while giving statement in court, she did not state that accused did not bother for her resistance. He did not feel pain after the alleged misdeed. She denied that accused did not commit rape on me. She also denied that on being scolded by her parents, and on being pressurised by Mahila Samity members, she falsely implicated the accused. She denied that she deposed falsely on being tutored by Mahila Samity members.

- 9. PW-3 Smt. Prasanati Here in her evidence deposed that in the month of October, 2016 mother of Victim, has informed her that menstruation of her daughter Victim J did not took place for last 2 months. On this she informed the matter to Nitu Gogoi, Mahila Samity member who informed the matter to Jonali Konwar. They assembled and on asking victim, she told them that accused Ramu took her to some distance area and committed rape with her. She also told them that accused did the misdeed twice and paid Rs. 100/each day. After knowing this, mahila samity members took her to Charaipung Police Station where Meera Baghowa has lodged the FIR. At that time Victim was aged about 14 years. In her cross-examination she deposed that she stated the age of Victim on assumption. She deposed basing on the facts disclosed by victim.
- 10. PW-4 Smt. Nitu Gogoi, in her evidence deposed that in the month of October, 2016 Pramanti Here informed her about stoppage of menstruation of victim J and knowing this, she informed the matter to Jonali Konwar and Biju Tipomia. Members of Mahila Samity assembled at the house of victim and on asking, she told them that accused Ramu took her to some distance area on hill side and committed rape with her. She also told them that accused did the misdeed twice and paid Rs. 100/- each day. After knowing this, mahila samity members took her mother to Charaipung Police Station where Meera Baghowa has lodged the FIR. In her cross-examination she admitted that she have no knowledge of age of victim. At the time of interrogating Victim, 30 to 40 members of Mahila Samity were present in her house. She denied that while giving statement to police, she has not stated that Victim told them that accused committed rape with victim twice and paid Rs. 100/- on each day.

- 11. PW-5 Sri Naren Sherowa in his evidence deposed that in the month of October, 2016, Charaipung Police came to his Bagan in search of accused. On searching, accused absconded. From villagers, he came to know that Victim was pregnant.
- 12. PW-6 Sri Ramprasad Goala in her evidence deposed that he has no knowledge about this case. Police came to their village in search of the accused but he absconded.
- 13. PW 7 Dr. Pranjal Kumar Chutia in his evidence deposed that on 04.10. 2016, he examined victim i/c with Charaipung PS Case No. 26/2016 and found that her age was above 15 years but below 18 years. Victim was not pregnant. He proved the Medical Report as Exbt. 1. In his cross-examination victim did not disclose the date of occurrence.
- 14. PW-8 SI Nandeswar Borgohain the I/O in his evidence deposed that he has investigated the Charaipung PS case No. 26/16 u/s 4 of POCSO Act. Exbt. 2 is the FIR of the case. During investigation he went to the place of occurrence and drawn a sketch map of the PO. Exbt. 4 is the said sketch map. After the occurrence, during search, accused was found absconding. During investigation, on 29.01.2017, he apprehended the FIR named accused Sri Ramu Goala from the residence of father in law and arrested him. He could not collected the age proof certificate as the victim did not go to school. On completion of investigation, he has submitted charge sheet against the accused u/s 4 of POCSO Act. Exbt. 5 is the charge sheet. In his cross-examination affirmed that in 164 Cr.P.C statement given in court, though the victim has stated about presence of her friends while taking her by the accused, he has not investigated about the friends of the victim. Victim could not show the place of occurrence. In 164 Cr.P.C statements given in court, the victim was silent about resisting the accused while committing rape. As per FIR, the incident of rape took place about 2 months back of filling the FIR. He has not collected any other document regarding age of the victim.

- 15. From the above evidence on record, let me discuss the points formulated. So far point No. I is concerned regarding age of the victim, from the evidence of P.W. 1 it appears that on the date of occurrence her daughter victim 'J' was aged about 12-13 years. P.W.1 denied the defence suggestion that her daughter was aged above 18 years. In her cross she admitted that her elder son is aged about 20 years and the victim is next to him. While adducing evidence P.W. 2 the victim claimed her age as 14 years. In her cross examination she stated that she has stated her age as informed by the Mahila Samity members. P.W. 7, the M.O. in his evidence stated that on 04.10.2016 he examined the victim 'J' and upon radiological examination he determined the age of the victim between 15 to 18 years. P.W. 8, the I.O. in his evidence admitted that during investigation he has not collected any document relating to age of the victim as she did not go to school. From the above materials on record, I found force on the submission of learned Advocate for the accused that as per ratio laid by Hon'ble Supreme Court of India in several cases, there may be two years variation on the age as determined by the medical officer, and in cases where no conclusive evidence is available, accused should get the benefit on age, I am of the opinion that it will be safe to presume that on the date of alleged occurrence the victim 'J' was above the age of 18 years.
- Now coming to the Point No. II, from the evidence of victim as narrated above, it appears that accused took her twice to the jungle area and committed rape on her. As per the victim, on the first occasion, while she came to nearby shop with her friends, accused called her to go for a visit and after taking her in the jungle committed rape on her. After a week of this incident again accused took her to another place and committed rape on her. From this fact, it appears that though on the first occasion accused took her and committed rape, on the second time without any hesitation she went with the accused to the Jungle area. I found force in the submission of learned Advocate for the accused that the conduct of the victim itself shows that she went with the accused on her own being a consenting party.

- after nine days of the second incident, the sister of Nareswar asked her about her menstruation period and knowing about stopping her menstruation she informed the matter to Mahila Samity members. From the evidence of P.W.3 Smt. Prasanti Here and P.W.4 Smt. Nitu Gogoi it appears that on knowing about the fact of stopping of menstruation period they came to the residence of the victim and in presence of her parents asked her on which she disclosed that about two months back accused Ramu took her to Jungle and committed rape on her. P.W.3 and P.W.4 added a new fact that after committing misdeed with victim 'J' accused paid Rs.100/- to the victim on each occasion. Though victim was silent on receiving Rs. 100/- on each occasion but it shows that she was a consenting party in going with the accused in jungle and establishing physical relation with him.
- 18. From the evidence of P.W.1 to P.W.4 it is apparent that the FIR was lodged at the instance of P.W.3 and P.W.4, the members of the Mahila Samity. None of the P.W.1, P.W.3 and P.W.4 have ever seen the victim with the accused. Prosecution did not examine the friends of the victim with whom she went to the nearby shop just before the first day of occurrence.
- 19. P.W.5 Sri Naren Sherowa though stated about pregnancy of the victim, but the M.O. (P.W.7) did not find any such symptom of pregnancy. Thus a question arose if at all the menstruation period stopped for two months, normally the M.O. should have found signs of pregnancy. In this case the entire episode starts on the knowledge of stopping of menstruation of the victim and non-finding of symptom of pregnancy casts a serious doubt.
- Apart from above, the difference of probable time of occurrence also casts a serious doubt on the credibility of the evidence of the victim. As per the victim (P.W.2) she informed the matter after nine days of the second occurrence, but as per the P.W.1, P.W.3 and P.W.4, the matter was brought to their notice after two months of the occurrence. Apart from all above,

prosecution has not produced any witness to show that any of the villagers has seen the accused in going with the victim towards the jungle.

- 21. So considering the inherent contradictions, i.e. difference of probable time of occurrence in the evidence of the witnesses, taking of Rs.100/-by the victim as deposed by P.W.3 and P.W.4, and the medical evidence of non-finding any sign of pregnancy leads me to hold that the allegations of rape as leveled against the accused are not beyond doubt. As such, accused is entitled for the benefit of doubt.
- 22. Considering all above, I am of the opinion that prosecution has totally failed to prove the ingredients of offence U/S 6 of POCSO Act against the accused beyond all reasonable doubt. As such, accused Ramu Gowalla is acquitted from the charge U/S 6 of POCSO Act, 2012 and set at liberty forthwith.
- 23. Issue release order to the Jail Supdt. of District Jail, Sivasagar accordingly.
- 24. As the accused was in Jail custody, no order is passed U/S 437 A Cr.P.C.
- 25. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation U/S 357 A Cr.P.C.
- 26. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 27. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 11th day of December 2017 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX

1. Prosecution witnesses -

- P.W.1 Smt. Meera Baghowar (Informant)
- P.W.2 (Victim)
- P.W.3 Smt. Prasanti Here
- P.W.4 Smt. Nitu Gogoi
- P.W.5 Sri Naren Sherowa
- P.W.6 Sri Ram Prasad Gowalla
- P.W.7 Dr. Pranjal Kumar Chetia (M.O.)
- P.W.8 SI Nandeswar Borgohain (I.O.)
- 2. <u>Defence witnesses</u>: None
- 3. <u>Court witnesses</u> : None
- 4. Exhibits by prosecution -
 - Exbt.1 Medical report.
 - Exbt.2 FIR
 - Exbt.3 State of the victim U/S 164 Cr.P.C.
 - Exbt.4 Sketch map
 - Exbt.5 Charge-Sheet

Special Judge, Sivasagar: