

**IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI.**

**Special (POCSO) Case No. 08/2017**

(Under Section 448/506 of I.P.C. R/W Section 4 of POCSO Act)

**State**

**-Versus-**

Samsul Alom Mazumder .....Accused.

**PRESENT : Shri D. Bhattacharjee, AJS,  
Special Judge, Hailakandi.**

**Particulars and Appearances :-**

For the State	: - Shri U.K. Das, Ld. Public Prosecutor.
For the Accused	: - Shri T.I. Laskar, Ld. Advocate.
Dates of recording prosecution evidences	: - 27.11.2017, 11.12.2017, 20.03.2018 & 07.04.2018.
Date of recording statement U/S 313 of Cr.P.C.	: - 19.04.2018.
Date of Argument	: - 28.05.2018.
Date of Judgment	: - 11.06.2018.

**JUDGMENT**

- 1.** The prosecution case as evolved from the FIR lodged on 29.07.2017 by one Mustt. Rahima Begum Choudhury with the Officer-in-charge, Katlicherra Police Station is that on 29.07.2017 at about 12:30 P.M. while she was not in home, the accused Md. Samsul Alom Mazumder entered into her house and started dragging her minor daughter (name withheld) with evil intention. While her daughter wanted to make hue and cry, the accused took out a knife and committed rape on her by putting her in fear of death. Still her daughter raised hue and cry and when the neighbouring people came, the accused fled away. As a result, her daughter sustained injuries at her private parts.

*Contd.....P/2.*

*D  
11.06.18*  
**SPECIAL JUDGE  
HAILAKANDI**

-2-

**2.** On receipt of the FIR, Katlicherra P.S. Case No. 104/2017 was registered under Section 448/376/506 of I.P.C. read with Section 4 of POCSO Act and S.I. Kalyan Bora was entrusted to investigate the case. During investigation, police visited the place of occurrence, prepared rough sketch map thereof, recorded the statements of witnesses, got the victim medically examined, also got her statement recorded by Magistrate under Section 164 of Cr.P.C., arrested the accused person, forwarded him to the court and after completion of investigation, having been found prima facie case laid charge sheet against the accused person under Section 448/376/506 of I.P.C. read with Section 4 of POCSO Act.

**3.** This Court being the Special Court under POCSO Act furnished copies of relevant materials to the accused person and after hearing the Ld. Public Prosecutor and the Ld. Defence counsel and after perusal of materials available on record having been found sufficient grounds for presuming that the accused person has committed the offence, framed the formal charge against him under Section 448/506 of I.P.C. read with Section 4 of POCSO Act. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

**4.** The prosecution in order to prove its case examined altogether 8 PWs. including the victim, informant, M.O. and I.O. The defence plea as evident from the trend of cross examination is of total denial. The accused person was examined under Section 313 of Cr.P.C. and his statement was recorded wherein he has denied all the allegations levelled against him and pleaded innocent. The defence declined to adduce any evidence.

**5.** Heard argument of the Ld. Public Prosecutor and the Ld. Defence counsel.

**POINTS FOR DETERMINATION**

- (i) Whether the accused person on 29.07.2017 at about 12:30 P.M. at Rongpur Part-VIII under Katlicherra Police Station committed house

*Contd.....P/3.*

D ✓ 11.08.18  
SPECIAL JUDGE  
HAILAKANDI

trespass by entering into the house of informant Musht. Rahima Begum Choudhury and thereby committed an offence punishable under Section 448 of I.P.C.?

- (ii) Whether the accused person on the aforesaid date, time and place committed intimidation by threatening daughter (victim) of the informant to cause her death and thereby committed an offence punishable under Section 506 of I.P.C.?
- (iii) Whether the accused person on the aforesaid date, time and place caused penetrative sexual assault upon the victim and thereby committed an offence punishable under Section 4 of the POCSO Act?

**DISCUSSION, DECISION AND REASONS THEREOF**

**6.** Before entering into the merit of the case, at the very outset it is apposite to go through the evidence available on record.

The PW-1, victim has deposed that on 29.07.2017 at about 12:30 P.M. while she was sleeping in her house alone, the accused person Samsul entered into her house through the window and gagged her mouth by his hand and threatened her not to raise any alarm. Thereafter, the accused pulled her wearing cloths and did bad acts with her. She raised hue and cry and then the accused fled away. After about 1 hour, her mother came and she reported the entire incident and then her mother filed the case. She has further stated that she was medically examined and her statement was recorded by a Magistrate vide Ext.-1.

In cross examination, she has stated that the accused is her relative. There are 4 families residing in the same homestead where she resides. On the relevant day, her sister and brother were present in the house. At the relevant time, she was menstruating. The accused did not commit sexual intercourse with her. While she raised hue and cry, the accused left the place. She has further stated that her mother filed the case out of misunderstanding as she was in sleeping mood at the relevant time. She also stated that she made

*Contd.....P/4.*

D  
11.08.18  
SPECIAL JUDGE  
HAILAKANDI

the statement before Magistrate on being tutored by her family members as a consequence of misunderstanding. She also stated that if the accused person is acquitted of the case she will have no objection.

**7.** The PW-2, Rahima Begum Choudhury, informant of this case has deposed that the accused is her nephew. On the relevant day, she was out of her house in connection with her work and returned home at about 3 P.M. then her daughter reported her that the accused entered into her room, pulled wearing cloths and attempted to do bad acts with her but as her daughter raised hue and cry, the accused could not effectuate his evil object and fled away. On the relevant day itself she lodged the case.

In cross examination, she has stated that her daughter was crying and as such she could not narrate the entire incident to her properly. She had good relation and visiting terms with the accused person. Subsequently, she realized that due to misunderstanding she filed the case out of anger. She will have no objection if the accused person is acquitted.

**8.** The PW-3, Kamlarun Nessa Laskar has deposed that on the relevant day at about 11 A.M. on hearing hue and cry from the house of informant, she went there and found the daughter of informant was crying. She asked the reason of her crying but the victim did not reply. Thereafter, the informant came and took her daughter to Katlicherra.

**9.** The PW-4, Jasmin Sultana Mazumder has deposed that on the relevant day on hearing hue and cry at about 11 A.M. she went to the house of victim and found the victim was crying. On being asked, the victim did not state anything to her about the reason of her cry. Thereafter, the informant came and took the victim to the police station.

**10.** The PW-5, Dr. Rehana Begum has deposed that on 29.07.2017 at about 3:50 P.M. she examined the victim at Civil Hospital, Hailakandi on police requisition and found :- (i) no spermatozoa on vaginal swap examination, (ii) there was bleeding per vagina, (iii) one lacerated wound over

*Contd.....P/5.*

✓ 11.08.18  
SPECIAL JUDGE  
HAILAKANDI

posterior vaginal wall of size 1cm x 5cm x 5cm and (iv) it shows that there was evidence of rape.

She has also stated that for age determination the victim girl was referred to SMCH, Silchar but the report to that effect has not been received. In describing history she has stated that it was of alleged rape on 29.07.2017. Ext.-2 is the said medical report.

In cross examination, she has stated that from the injury report of the victim she reached to the conclusion that it was an incident of rape. She has further stated that if finger is inserted, such type of injury may happen. In her report she did not mention about the past menstruation cycle of the victim.

**11.** The PW-6, Halima Begum Mazumder, elder sister of the victim has deposed that she does not know anything about the incident.

**12.** The PW-7, Bilal Uddin Mazumder, a child of 11 years has also stated that he does not know anything about the incident.

**13.** The PW-8, Kalyan Bora, the Investigating Officer of this case has deposed that on 29.07.2017 at about 2:30 P.M. the informant came with the victim and reported that the accused Samsul Alom Mazumder raped the victim and accordingly, the G.D. Entry No. 502 dated 29.07.2017 was made. The victim was medically examined. He was entrusted to investigate the case by the Officer-in-charge and after completion of investigation, he submitted charge sheet against the accused person vide Ext.-8. He has further stated that during investigation the informant produced a photocopy of Admit Card of the victim of appearing in HSLC examination but since it was a photocopy, he did not seize it. The victim had stated to him that the original copy of the Admit Card was lost.

In cross examination, he has stated that there is no note in the case diary in regard to the loss of Admit Card. He did not make any effort to verify the genuineness of the photocopy of Admit Card. The victim and the

*Contd.....P/6.*

01/08/18  
SPECIAL JUDGE  
HAILAKANDI

informant did not produce any blood stained cloth to him as the victim had taken bath after the incident and washed the cloths. He did not find any stain and mark of violence in the place of occurrence indicating the commission of offence.

**14.** At the very outset, in determining age of the victim girl at the relevant time, from the Ext.-2 medical report and from the evidence of PW-5 Medical Officer, it is revealed that the victim girl was referred to SMCH, Silchar, for age determination but there is nothing on record whether her radiological age was determined or not. Therefore, there is no medical evidence to ascertain the age of victim at the relevant time. The victim in her evidence as PW-1 has stated that on the day of deposition i.e. on 27.11.2017 she was about 17 years. The incident occurred on 29.07.2017 i.e. 4 months before of her deposition in the court. Since, she has stated that her age about 17 years, it may be 16 or 17 or 18 years. The victim in her deposition has stated that she is a student of Class-XI. The mother of the victim PW-2 did not state anything as regards age of the victim. From the evidence of PW-8 Investigating Officer, it is appeared that during investigation, informant produced a photocopy of Admit Card of the victim of appearing HSLC examination. But since it was a photocopy he did not seize it. Neither the victim nor the informant has stated anything about the said Admit Card. Since the victim is a student of Class- XI, she could have produced her age proof documents but she did not do so. The photocopy of the Admit Card has not been brought on record and has not received any corroboration from the evidence of victim and informant. Therefore, this Court has no option to determine the age of victim at the relevant time on the basis of radiological examination or on the basis of any document. As discussed above, the victim has stated that 4 months after the incident she was aged about 17 years and therefore, the victim the age of the victim at the relevant time was either 16 or 17 or 18 years. The proposition of law is settled that where there are two plausible views, the view which is in favour of accused shall be accepted and thus, the higher age of the victim is taken into consideration and thereby held that she was major at the relevant time. Therefore, the POCSO Act is not applicable in the instant case.

D/11.08.18  
SPECIAL JUDGE  
HAILAKANDI

*Contd.....P/7.*

**15.** The evidence of PW-5 Medical Officer depicts that there was bleeding per vagina and one lacerated wound over posterior vaginal wall of size 1cm x .5cm x 5cm and has opined that there was evidence of rape and she issued the Ext.-2 medical report. Therefore, the medical evidence disclosed that the victim was subjected to rape on 29.07.2017.

**16.** The PW-2 is the mother of the victim and her evidence transpires she was not at home, at the relevant time. The PWs. -3, 4 & 6 are the neighbours of the victim are also not eye witness to the occurrence. The PW-7 has stated that he cannot say anything about the incident. Therefore, in the instant case the victim is the only witness who can say about the incident. The victim by adducing evidence as PW-1 in her examination in chief has deposed that on 29.07.2017 at about 12:30 P.M. while she was sleeping, the accused entered into her room through window and by gagging her mouth, pulled her wearing cloths and committed bad act with her. On being asked by this Court about the bad act, the victim did not explain anything. But in cross examination, she has stated that the accused did not commit sexual intercourse with her. Also stated that when she raised hue and cry, the accused left the place.

In her evidence in chief, she has very categorically stated that the accused pulled her wearing cloths and committed bad acts with her but in cross examination, she has stated that the accused did not commit sexual intercourse with her and when she raised hue and cry, the accused left the place. From the above evidence of the victim, there is ambiguity in regard to the fact that whether she raised hue and cry on seeing the accused or when the accused pulled her wearing cloths. The victim has stated that the accused is her relative and visits her house very frequently.

**17.** The PW-5, Doctor opined that there was bleeding per vagina but the victim has stated that at that relevant point of time, she was menstruating. Therefore, the findings of the Medical Officer that there was bleeding per vagina is shrouded with doubt. The PW-5, Doctor found one lacerated injury in the vaginal wall of the victim but the victim in her evidence in

*Contd.....P/8.*

D  
11-08-18  
SPECIAL JUDGE  
HAILAKANDI

chief has stated that she did not feel any pain. Had the victim sustained any lacerated injury in her private parts, she would have felt pain.

**18.** In the Ext.-1, statement under Section 164 of Cr.P.C. the victim had implicated the accused person of committing rape with her but in cross examination she has stated that she made the statement before Magistrate on being tutored by her family members. The proposition of law is well settled that the statement under Section 164 of Cr.P.C. is not a substantive evidence but it can be used only for the purpose of contradiction and corroboration. Therefore, the said statement is of no use in aiding the case of prosecution.

**19.** The victim in her cross examination has stated that since she was in sleeping mood at the relevant time, she could not narrate the entire incident to her mother properly and as such, out of misunderstanding her mother filed the case against the accused. She has further stated that if the accused person is acquitted of the offence, she will have no objection. The PW-2, informant though implicated the accused person in her evidence in chief but in cross examination she has given complete go by to the same and stated that she could not understand the case properly from her daughter and out of misunderstanding she has filed the case against the accused out of anger.

**20.** Since it has been held above that the victim was a major girl at the relevant time, under the facts and circumstances of the case, it is inferred that had any such incident occurred, it was occurred with the consent of the victim and the victim and informant out of misunderstanding had filed the case.

**21.** In view of above discussions, it is held that the prosecution could not prove its case against the accused person beyond all reasonable doubt and therefore, ***the accused Samsul Alom Mazumder is acquitted of the offence charged under Section 448/506 of I.P.C. read with Section 4 of POCSO Act. Set him at liberty forthwith.***

**22.** The bail bond will remain in force for a further period of six months.

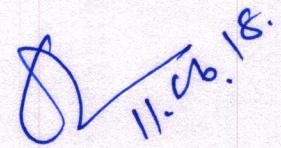
*Contd.....P/9.*

D  
11.08.18  
SPECIAL JUDGE  
HAILAKANDI

**Special (POCSO) Case No. 08/2017**

-9-

- 23.** Send a copy of this judgment to the District Magistrate, Hailakandi.
- 24.** The Special (POCSO) Case is disposed of accordingly.
- 25.** Given under my hand and seal of this Court on this the 11<sup>th</sup> day of June, 2018 at Hailakandi.



11.06.18.

Special Judge,  
Hailakandi  
HAILAKANDI

Dictated and corrected by me:



Special Judge, Hailakandi.  
SPECIAL JUDGE  
HAILAKANDI

**Dictation is taken and transcribed by Samsher Bahadur, Stenographer  
Grade – III.**

*Contd.....P/10.*

**Appendix :-**

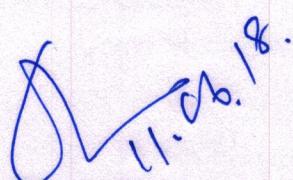
**Oral Evidences :-**

PW-1, Ramzana Begum Choudhury.  
PW-2, Rahima Begum Choudhury.  
PW-3, Kamilarun Nessa Laskar.  
PW-4, Jasmin Sultana Mazumder.  
PW-5, Dr. Rehana Begum.  
PW-6, Halima Begum Mazumder.  
PW-7, Bilal Uddin Mazumder.  
PW-8, Kalyan Borah.

**Documentary Evidences :-**

Ext.-1, Statement of victim.  
Ext.-2, Medical Report.  
Ext.-3, Laboratory Report.  
Ext.-4, Extract copy of G.D. Entry No. 502 dt. 29.07.2017.  
Ext.-5, FIR.  
Ext.-6, FIR Form.  
Ext.-7, Sketch map of the place of occurrence.  
Ext.-8, Charge sheet.

**Defence did not adduce any evidence.**

  
**Special Judge,  
Hailakandi.  
SPECIAL JUDGE  
HAILAKANDI**