

IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

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

JUDGMENT IN SESSIONS CASE NO. 131(DH) of 2015.

(G.R. Case No.599/2015; Silapathar P.S. Case No.180/2015 Under Sections-376 IPC R/W section 6 of POCSO Act.)

The State of Assam

- Versus -

Shri Anil Kumbang,Accused Person
S/O Balaram Kumbang,
R/O Ayengia Patiri Gaon,
P.S. Silapathar,
Dist.- Dhemaji.

Committing Magistrate:- Shri N. Kuri,

Addl. Chief Judicial Magistrate,
Dhemaji.

Appearance:

Shri A. Fogla,
Public ProsecutorFor the State
Shri K.C. Sonowal, AdvocateFor the Accused

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Dhemaji.

Date of prosecution evidence :01-02-2016,25-05-2016,6-02-2017,

17-6-2017, 22-9-2017, 28-11-2017,

Date of arguments : 26-6-2017

Date of Judgment : 10-7-2017.

JUDGMENT

1. The prosecution case in brief is that on 15-7-2015 complainant-Shri Cheniram Lagachu lodged an ejahar with Silapathar Police Station alleging interalia that about 5 months back from the date of filing the ejahar on 15-7-2015, the accused-Shri Anil Kumbang, taking advantage of absence of other persons in his home, committed rape on his minor daughter-Miss 'X' (**real name concealed**) aged about 15 years by way inducement to marry her. It is also stated in the ejahar that the accused threatened the victim Miss 'X' not to disclose the fact to any other person.

2. On receipt of the ejahar police registered a case vide Silapathar P.S. Case No.180/2017 u/s 376/506 of I.P.C. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Anil Kumbang u/s 376 of I.P.C. read with sec. 6 of POCSO Act.

3. The case came up before the learned Addl. Chief Judicial Magistrate, Dhemaji and the Ld. Magistrate issued process for appearance of the accused and on appearance furnished necessary copies to the accused and committed the case to this Court.

4. On receipt of the case record and on production of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 376 (1) of IPC read with sec. 6 of POCSO Act and

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read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 7 witnesses including the Medical Officer and the Investigating Officer. At the closure of the prosecution evidence, statement of the accused was recorded/s 313 of Cr.P.C. Defence plea is of denial. Defence adduced no evidence.

5. Points for determination :

(1) That, before 5 months from the date of 14-7-2015, on several occasions, inside the house of informant-Cheniram Lagachu, you committed rape on Miss 'X' , a minor girl below the age of 18 years and thereby committed an offence punishable u/s 376 (1) of IPC.

(2) That, before 5 months from the date of 14-7-2015, on several occasions, inside the house of informant-CHeniram Lagachu, you committed penetrative sexual assault on Miss 'X' , a minor girl below the age of 18 years and thereby committed an offence punishable u/s 6 of POCSO Act.

6. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof :

7. **PW1** Shri Cheniram Lagachu stated that Exhibit-1 is the ejahar filed by him against the accused-Anil Kumbang and Exhibit-1(1) is his signature. 'X' is his daughter. He filed the case against the accused as because his daughter (victim Miss 'X') conceived through the accused. At the time of occurrence, victim Miss 'X' was aged about15 years. After filing the ejahar, she (victim Miss 'X') gave birth to a female child. She is now staying in their house along with her child. Police recorded his statement. The victim

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Miss 'X' was examined by Doctor. Exhibit-2 is the Birth Certificate of the victim Miss 'X' (compared with original).

In cross PW1 stated that Miss 'X' gave birth to the child in the house of the accused. He also stated that after one month of birth of the child they brought Miss 'X' to his house. As Miss 'X' conceived through the accused, they handed-over her (victim Miss 'X') to the accused. At the time of occurrence Miss 'X' was reading in Class-VIII. At that time her (victim Miss 'X') age was 15 years. He denied that the victim Miss 'X' was above 18 years at the relevant time of occurrence.

8. **PW2**, the victim Miss 'X' stated that she knows the accused. Occurrence took place in the year, 2015. At the time of occurrence, she was reading in Class-VIII. Taking advantage of absence of other family members at home, the accused came to her house and forcibly committed rape on her. Accused committed rape by penetrating his penis into her vagina. Out of fear, she did not disclose the fact to any other person. Later on, while she was felt unwell, she told about the matter to her parents. Then her father filed the case at Police Station. Police recorded her statement. Magistrate also recorded her statement. Exhibit-3 is the statement before the Magistrate and Ext-3(1) is her signature therein. After filing the case, she gave birth to a female child.

In cross-examination PW2 stated that her child was born in the house of the accused. As she became pregnant, she was handed-over to the accused. Accused and his mother tortured her and so she came back to her parent's house. At the time of giving statement before the Magistrate, she told him that her age was 19 years and also told that she will be the wife of the accused. She denied that sexual intercourse was done on her consent. She denied the defence suggestion that she has given false evidence that the

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accused committed rape on her. She also denied that at the time of occurrence she was 19 years of age.

9. **PW3** Dr. Chandra Kt. Mili stated that on 15-7-2015 he was serving as Sr. Medical & Health Officer at Model Hospital, Silapathar. On that day at about 12.18 PM he examined 'X', D/O Cheniram Lagachu, being MHC No.156/2015 on police requisition on being escorted and identified by WPC-Purnima Saikia. On examined he found - No sign of injury or mark of violence over the body of the victim Miss 'X'. In his opinion, the doctor (PW3) opined that the girl was 12 years of age and found pregnant for 5 months by clinical examination. Exhibit-4 is the medical report and Ext-4(1) is his signature. Exhibit-5 is the pregnancy test.

In cross-examination Doctor stated that he had not done any test to determine the age himself.

10. **PW4** Shri Nandreswar Lagachu stated that he knows the accused Complainant is his father and the victim Miss 'X' is his younger sister. Occurrence took place about 2 years back (from the date of his recording evidence). After 2/3 months of the occurrence, his sister (victim Miss 'X') told that the accused committed rape on her. His sister became pregnant and she gave birth to a female child. At the time of occurrence his sister was reading in Class-VIII. As the accused did not accept the victim Miss 'X' as his wife, his father (PW1) filed the case at the Police Station.

In cross-examination PW4 stated that the accused married his sister later on. His sister is now in the house of the accused.

11. **PW5** Smti Dalimi Lagachu stated that the complainant is her husband. The accused is from her village. Victim Miss 'X' is her daughter. Occurrence took place about 2 years back (from the date of her recording evidence). While the accused's mother took her daughter to abort her

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pregnancy, then police met them and apprehended them and informed them. Receiving the information about the matter, her husband went to the Police Station. Later she also went there. On being asked to the victim Miss 'X', she told that she became pregnant through the accused. At that time the victim Miss 'X' was 12 years of age. Later on, the victim Miss 'X' gave birth to a female child.

In cross-examination PW5 denied that the victim Miss 'X' did not state before her that she conceived through the accused.

12. **PW6** Shri Utpal Kumbang stated that he knows accused as well as the complainant and the victim Miss 'X' girl. They are from the same village. Accused is his younger brother. Occurrence took place about 2 years back (from the date of his recording evidence). There was love-affairs between the accused and the victim Miss 'X' and so you took her away. At present, the victim Miss 'X' is staying in their house. The age of the victim Miss 'X' may be 19 years.

13. **PW7** Shri Raja Sarkar, S.I. Police, stated that on 15-7-2015 he was serving as Attached Officer at Silapathar Police Station. On that day O/C Silapathar P.S. received an ejahar from one Cheniram Lagachu and accordingly, a case was registered vide Silapathar P.S. Case No. 180/2015 u/s 376/506 of IPC R/W Sec. 4 of POCSO Act and entrusted him to investigate the case. During investigation he visited the place of occurrence i.e. the house of the complainant at Pateri Akajan, drew a sketch map of the P.O., recorded the statements of the witnesses at the P.O. including the complainant, got the victim Miss 'X' medically examined and also produced the victim Miss 'X' before the Magistrate for recording her statement u/s 164 of Cr.P.C. He also seized one birth certificate from the complainant. He collected the medical examination report of the victim Miss 'X' and the

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statement of the victim Miss 'X' recorded u/s 164 of Cr.P.C. He could not arrest the accused during investigation as the accused was absconding. On completion of investigation he found sufficient materials against the accused and accordingly submitted charge- sheet against the accused u/s 376 IPC read with Sec. 6 of POCSO Act.

Exhibit-6 is the seizure list and Ext-6(1) is his signature. Material Ext-1 is the Birth Certificate of 'X'. Ext-7 is the sketch map and Ext-7(1) is his signature. Ext-8 is the Charge-sheet and Ext-8(1) is his signature.

I/O is not cross-examined by defence.

Appreciation of evidence:

14. From the discussion of the evidence on record it appears that complainant has been examined as PW1. Complainant has proved his signature in the ejahar marked as Ext.1(1). He testified that the accused had sexual intercourse with her daughter and as a result his daughter became pregnant. He stated that his daughter was aged about 15 years at the time of incident and after the incident she gave to a child. PW2 is the victim Miss 'X'. According to victim Miss 'X'/PW2 the accused came to her house and taking advantage of absence of other inmates he had sexual intercourse with herby penetrating his penis into her vagina against her will. She became pregnant and then her father lodged complaint.

15. It also appears from record that PW3 MO medically examined the victim Miss 'X' and after examination found that the victim Miss 'X' is pregnant for five months.

16. From the evidence of PW1 and PW2 it transpires that the victim Miss 'X' at the time of incident was aged about 15 years. However, PW3

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opined that the age of the victim Miss 'X' is about 12 years as per clinical examination. PW4, PW5 and PW6 spoke that the accused had sexual intercourse with victim Miss 'X' and she became pregnant. PW5, wife of the accused stated that on being asked the victim Miss 'X' told her that Anil Kumbang (PW5's husband) had made her pregnant.

17. Now coming to the evidence of the IO it is found that the IO during investigation recorded statement of the witnesses also had her statement recorded u/s 164 Cr.PC by Magistrate.

18. It also reveals from the evidence of IO that after the incident the accused was absconding.

19. It may noted that in the statement u/s 164 Cr.PC victim Miss 'X' stated that her age is 19 years and she also stated that she was in love with accused Anil Kumbang. She stated that the accused used to visit her house and he promised to marry her for which she submitted to him for sexual intercourse on several occasions. She also stated that as a result she became pregnant and she wanted to be wife of Anil Kumbang.

20. In the cross examination PW2/victim Miss 'X' stated that when she became pregnant her parents left her in the house of accused and she gave birth to child in the house of the accused. Further she stated that the accused and his mother started to torture her and she came back to her parent's house.

21. On consideration of the evidence on record it is found that victim Miss 'X' is minor aged about 15 years and the accused had had sexual intercourse with her by way of inducement and allurement. I also examined Ext 2 birth certificate. As per birth certificate the date of birth of the victim Miss 'X' is 14-02-2003. The incident dates back to the year 2015.

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22. From the evidence on record it is quite apparent and evident that the victim Miss 'X' became pregnant as a result of sexual intercourse by the accused. I have also considered the facts and circumstances of this case and we find that the victim Miss 'X' made up of her mind to be the wife of the accused. It also appears from record that after the victim Miss 'X' became pregnant her parents handed her over to the accused and left her in his house. But the accused was reluctant to accept her and as a result she came back to her parent's house.

Defence plea and argument:

23. While arguing the case on behalf of the accused the Id. defence counsel submitted that the victim stayed with the accused as wife and hence the charges against the accused are not attracted in this case.

24. I have given my anxious consideration to the facts and circumstances of the case. In my opinion the fact that the victim stayed with the accused for some time will not absolve the accused from the criminal liability.

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25. Thus having analysed the evidence and facts and circumstances I find that the victim Miss 'X' and other witnesses wholly corroborates one another with respect to all the materials particulars and I find that testimony of prosecutrix inspires confidence and is found to be convincing and reliable.

26. Now let me see whether the evidence on record constitutes offence u/s 376(1) IPC R/W section 6 of POCSO Act. There is clear evidence of penetration of penis into vagina. So I may look into the provisions of u/s 375 IPC and section 6 of POCSO Act.

375. Rape – A man is said to commit "rape" if he -

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstance falling under any of the following seven descriptions:-

Firstly.- Against her will

Secondly.- Without her consent

Thirdly.- With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because he believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent; offences punishable under u/s 376 IPC.

5. Aggravated penetrative sexual assault.—

(j) whoever commits penetrative sexual assault on a child, which-- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault ; offence punishable under u/s 6 of POCSO Act.

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Findings:

27. From the thread-bare discussion of the evidence and facts and circumstances we find that the victim Miss 'X' is aged below 15 years and she had fallen prey to the inducement and allurement exhibited by the accused and the accused committed penetrative sexual intercourse/assault on the victim Miss 'X' and made her pregnant. Even if we assume (but not admitted) that the victim Miss 'X' consented to sexual intercourse, the victim Miss 'X' being minor her consent is immaterial.
28. In view of what has been discussed above I find that prosecution has been able to prove offence u/s 376 IPC R/W section 6 of POCSO Act against the accused beyond all reasonable doubt.

ORDER

29. In the result I find the accused Anil Kumbang guilty u/s 376 IPC R/W section 6 of the POCSO Act. Accordingly he is convicted thereunder.
30. Heard the accused person on the point of sentence.
31. The accused pleaded for mercy. It is submitted that the accused is at the prime of his youth and only about 25 years.
32. I have considered the facts and circumstances and also the submission made by and on behalf of the accused. Considering all aspect I am inclined to award the minimum sentence u/s 6 of POCSO Act.
33. Accordingly accused is sentenced to R.I. for 10 (ten) years and to pay a fine of Rs.5,000/- (five thousand) i/d R.I. for another 3 (three) months u/s 6 of POCSO Act.

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Victim Compensation U/s 357 A of Cr.PC.

34. In this case the victim has suffered physically and mentally due to a sexual assault and as result became pregnant and also gave birth to a child. So, I find that it is a fit case to award compensation to the victim u/s 357 A of Cr.PC. Accordingly, a sum of Rs.50,000/-(fifty thousand) only is awarded as compensation to the victim as interim measure to be paid by DLSA, Dhemaji, after making due enquiry. It may be mentioned that the fine amount of Rs.5,000/-(five thousand) will not be sufficient for compensation, for which compensation u/s 357A Cr.PC is awarded.
35. Further, it is ordered that the DLSA, Dhemaji if after making enquiry finds that the victim needs rehabilitation for suffering physically and mentally, shall award suitable compensation to her in addition to the interim compensation of Rs.50,000/-(fifty thousand).
36. Send a copy of judgment to secretary DLSA for necessary action.
37. A copy of judgment free of cost be given to the accused.
38. A copy of judgment shall be furnished to the District magistrate u/s 365 Cr.PC.
39. Judgment is pronounced in open Court under my seal and signature on this the **10th day of July/2018**.

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(S. Das)
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Dhemaji.

APPENDIX:

Prosecution Witnesses

PW1 : Shri Cheniram Lagachu,

PW2 : Victim Miss 'X' ,

PW3 : Dr. Chandra Kt. Mili,

PW4 : Shri Nandeswar Lagachu,

PW5 : Smt. Dalimi Lagachu,

PW6 : Shri Utpal Kumbang,

PW7 : Shri Raja Sarkar, S.I.

Prosecution Exhibits :

Exhibit-1 : Ejahar.

Exhibit-1(1): Signatures of Cheniram Lagasu (complainant).

Exhibit-2 : Birth Certificate,

Exhibit-3 : Statement of victim Miss 'X'.

Exhibit-3(1): Signature of victim Miss 'X',

Exhibit-4 : Medical Report,

Exhibit-4(1) : Signature of Dr. Chandra Kt. Mili,

Exhibit-5 : Pregnancy test report.

Exhibit-6 : Seizure list.

Exhibit-6(1) : Signature of Raja Sarkar, SI.

Exhibit-7 : Sketch map,

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Exhibit-7(1): Signature of Raja Sarkar, IO,

Exhibit-8 : Charge sheet,

Exhibit-8(1): Signature of Raja Sarkar, IO,

Material Exhibits

M. Ext- 1 : Birth certificate.

Defence Exhibits :

None.

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