

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**:::UDALGURI**

**Present :Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Special (POCSO) 14/2017**

**U/S 4 of POCSO Act**

**State of Assam**

**-Vs-**

**Suklal Lohar.....Accused.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. Tarun Ch. Boro, Learned Advocate.

Date of Evidence : 14-12-17: 13-02-18: 23-05-18: 28-06-18:  
01-12-18: 14-03-19: 02-05-19: 29-05-19:  
27-06-19.

Date of Argument : 03-08-2019.

Date of Judgment : 16-08-2019.

**J U D G M E N T**

1. The prosecution case in brief is that on 29-03-17, at about 10 am the accused took the victim girl to his house with inducement and committed rape upon her. Then the father of the victim lodged an FIR with the Officer-in-Charge of Harisinga P.S.
2. On the basis of the FIR, Harisinga PS Case No. 20/17, under Section 4 of POCSO Act was registered and after completion of investigation Police

submitted charge-sheet under Section 4 of POCSO Act against the accused Suklal Lohar.

3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 4 of POCSO Act, learned Special Judge framed charge there under and the ingredients of charge under Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 27-06-2019, transferred the case to this court for disposal.
4. The prosecution in order to prove its case examined the following 13(thirteen) witnesses:
  - PW1- Saikan Paik.
  - PW2- Ajoy Tanti.
  - PW3- Jitu Khalko.
  - PW4- Dr. Amit Rajbongshi .
  - PW5- Bulu Kumari.
  - PW6- Dr. Michel Baghawar.
  - PW7- Kulmonti Paik.
  - PW8- Surabhi Tanti.
  - PW9- Victim-A.
  - PW10- Sunita Munda.
  - PW11- Tulshi Gour.
  - PW12- Shila Munda.
  - PW13- UBC Bhabiram Mochahary.
5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.

6. Situated thus, the points for determination in the instant case are set up as follows:-
- (I) Whether the accused person committed penetrative sexual assault upon Victim-A, aged about 10 years?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. Tarun Ch. Boro.
8. Learned Addl. P.P. has submitted that prosecution has adduced cogent, reliable and consistent evidence to bring home the charge leveled against the accused. The evidence of parents of the victim has been corroborated by the friend of the victim to whom the victim first informed about the incident. though the victim has not deposed anything against the accused but basing on the evidence of other prosecution witnesses the accused is liable to be punished.
9. Per contra learned defence counsel argued that due to previous inimical relationship with the accused the instant case was filed by the informant falsely in order to harass the accused. The informant admitted about his quarrel with the accused. The victim has not adduced evidence implicating the accused. The medical evidence has also not corroborated the prosecution case. The victim is a minor girl, had there been any incident of rape committed upon her the doctor would have found injury upon her private parts. The injury mark on the back and buttock of the victim was inflicted by the mother of the victim by beating her which has specifically been mentioned in the medical report. Moreover, the mother has also admitted beating her daughter after the alleged incident. learned defence counsel has also argued that the evidence of mother of the victim girl is not consistent and contradictory to the evidence of PW10. While PW7, the mother of the victim had deposed that she was narrated by the victim that when the accused committed rape upon her PW10 came to the room and

then the accused released the victim but there is no such evidence of PW10 corroborating the evidence of PW.

10. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
11. PW1 is Saikan Paik, informant and father of the victim girl. In his evidence PW1 had deposed that victim was aged about 6 years. At the time of occurrence he was not present in his house. The victim was playing with her friend Sunita Munda in their courtyard. Then accused called his daughter to his house. The accused had paid Rs.3/- to his daughter and Rs.5/- to Sunita Munda. Thereafter, the accused removed her panty and committed sexual assault with his daughter/victim. After returning from their working place Sunita informed his wife that accused did sexual assault on his daughter and narrated the incident in detail. On being asked to his daughter she told his wife that accused committed sexual assault on her. He was also informed about the incident by his wife. PW1 went to the house of the accused but he did not find him. Then his wife brought the accused from his house. The relatives of accused came. The Chowkidar informed the manager of Tea Estate. The manager called them. They told him about the incident. Thereafter PW1 lodged ejahar. PW1 put his thumb impression in the ejahar. In cross-examination, PW1 had stated that he did not see the incident since he was in his duty. PW1 used to go to his duty at about 8 AM. Near his house, houses of Lakhiram, Raju Paik, Baloram Praja, Johan Munda, Bircha Munda, Dominik are situated. They have their family. PW1 had a son aged about 7 years namely Sibnath Paik. PW1 had denied the suggestion that accused did not commit sexual assault on his daughter. Prior to the incident there was quarrel between accused and PW1. Since then they did not go to the house of the accused. PW1 had denied the suggestion that he had deposed falsely due to previous grudge.

12. PW2 is Ajoy Tanti. In his evidence PW2 had deposed that one day, their coordinator Surabhi Tanti informed him over phone that one boy from Hatigarh Tea Estate committed rape upon victim-A. He went to the police station alongwith the family of the victim. In cross-examination, PW2 had stated that after the information given by the coordinator of the NGO he did not know about the incident.
13. PW3 is Jitu Khalko, night chowkidar of tea garden. In his evidence PW3 had deposed that the father of the victim informed him in the morning that accused committed rape on his daughter. He immediately informed the manager of their garden. In cross-examination, PW3 had stated that he did not see the incident. The house of victim and the accused is in the same vicinity. There are several houses near the house of victim. PW3 had denied the suggestion that informant did not tell him about commission of rape on his daughter.
14. PW4 is Dr. Amit Rajbangshi. In his evidence PW3 had deposed that on 30.3.17, he examined the victim at Udalguri Civil Hospital and on examination, he found the following:-
- Physical examination:-  
Height- 102 cm, weight- 14 Kg, teeth- 20 Nos., axillary hair- absent, pubic hair- absent, breast- not developed, hymen- absent, vaginal injury nil, marks of violence:- Bruise over back and buttock (mother admitted of beating daughter), clothing yellow coloured jacket, white and green check frock. LMP has not attained.
- Vaginal swab examination for spermatozoa:- no spermatozoa seen.
- RADIOLOGICAL EXAMINATION:-  
X-ray for age determination vide plate No.RXIC 2960 dated 31.3.17 reported by Radiologist Dr. A. Deka (MD) shows radiological age approximate 6 years.
- (1) Right wrist joint- Epiphysis appeared in lower end of radius and ulna.

(2) Right elbow joint- Epiphysis upper end of radius and lower end of humerus from bone not appeared in upper end of ulna and iliac crest.

Urine for pregnancy test on 31.3.17 reported by Mangaldai Clinical Laboratory shows negative result.

Ultrasonography of abdomen on 31.3.17 by Sinologist, Dr. A. Deka reported as normal echofeature of organs imaged.

PW4 had deposed that in his opinion:

1. Radiological age approximate 6 years.
2. No injury over pubic region but injury mark at back and buttock (mother admitted of beating her daughter).
3. Smear report- No spermatozoa seen

Ext.1 is the report and Ext.1(1) is the signature of PW4.

In cross-examination, PW4 had stated that hymen of a girl may tear even before attaining puberty if she falls on a hard substance or riding bicycle etc.

15. PW5 is Bulu Kumari, Nurse of Hatigarh Tea Estate Central Hospital. In her evidence PW5 had deposed that on 30.3.17, she was serving as a nurse at Hatigarh Tea Estate Central Hospital. On that day a girl was brought to their hospital for medical examination. Accordingly the said girl was examined by the doctor. On being examined it was found that case was of sexual assault and as such, the girl was referred to Harisinga PHC for examination. In cross-examination, PW5 had stated that she only heard that the case was of sexual assault. But she did not know what kind of sexual assault had been committed on the girl before being produced at their hospital.

16. PW6 is Dr. Michel Baghwar. In his evidence PW6 had deposed that on 30.3.17, he was serving as a doctor at Hatigargh Tea Estate hospital. On that day a minor girl was brought to their garden hospital for medical examination. The minor girl was accompanied by some personnel of NGO and they narrated before them that the minor girl was sexually assaulted.

Then their senior doctor Fangshu physically examined the minor girl. Then the senior doctor told before the members of the NGO that the case being a sensitive one and he was not authorized and competent to examine such a case and as such without further examination the minor girl was referred to the nearest PHC at Harisinga. In cross-examination, PW6 had stated that since the minor girl was in stable condition and as such, they even did not provide preliminary treatment to her except referring for further treatment at Government hospital.

17. PW7 is Kulmonti Paik, mother of the victim girl. In her evidence PW7 had deposed that at the time of occurrence her victim daughter was 6 years old. On the day of occurrence she went to work in tea garden in the morning at around 8AM alongwith her husband who is also a tea garden worker leaving her victim girl alone. In the afternoon, she alongwith her husband returned from their work place. At that time her daughter told before them that during day time while she was playing with one Sunita near the house of the accused which is adjacent to their house called her daughter to his house and thereafter, the accused after taking her daughter in a room put off her pant lay her on the bed and, thereafter, the accused also put off his pant and on mounting on her committed rape on her. When her daughter raised cry Sunita came to the room and the accused released her daughter. In order to suppress the indecent act the accused gave Rs.3/- to her daughter and Rs.5/- to Sunita and asked both of them not to disclose about the incident to anyone. Regarding the incident they informed the Chowkidar of tea estate Jitu and also a local NGO. On the next day her husband Saiken Paik lodged an FIR with the police. After the incident she beat her daughter with lathi on her back and buttock for going to the house of the accused. In cross-examination, PW7 had stated that they have no visiting terms though accused is their next door neighbour. PW7 had not witnessed the incident. Sunita first narrated her about the incident. But when her daughter did not state anything to her about the incident she beat her on her back and buttock. Then she

narrated about the incident. After the incident, accused was assaulted by the local people. PW7 had denied the suggestion that accused had not committed rape on her daughter and they had falsely implicated him in this case out of animosity and grudge.

18. PW8 is Surabhi Tanti. In her evidence PW8 had deposed that the occurrence took place on 29-03-2017 and she came to know about the incident on the next day i.e, 30-03-2017 at about 6.30-7.00 AM from the Manager of Hathigarh Tea Estate. The Manager informed PW8 that one 6 years old girl was raped by the accused Suklal and the victim had already been taken to hospital and PW8 was needed to attend the hospital. Accordingly, he proceeded to the hospital. At that time parents of the victim were present and they narrated about the incident that her victim daughter was raped by the accused when she was alone in the home. Subsequently with the direction of the manager of the Hathigarh Tea Estate he came along with the parents of the victim to Harisinga PS for lodgment of FIR. In cross-examination, PW8 had stated that he did not ask the victim regarding the incident. He did not witness the incident. PW8 had denied the suggestion that accused had not committed rape on the victim and that father of the victim lodged a false FIR against the accused out of grudge.

19. PW9 is Victim-A. In her evidence PW9 had deposed that she knew the accused present in the dock. At the material point of time the accused did bad things to her. Sunita was with her at that time. The accused gave her and Sunita some money to buy toffee. Her statement was recorded U/S 164 CrPC and she put her thumb impression therein. In cross-examination, PW9 had stated that she did not know as to what bad things accused did to her.

20. PW10 is Sunita Munda, friend of victim-A. In her evidence PW10 had deposed that on the date of occurrence while she was playing with victim

and other children the accused asked them to harvest some leafy vegetable from his cultivation field. They accordingly harvest vegetables and handed over to the accused. Thereafter victim went into the house of accused and she remained outside with her friends. After few moments victim came out and she told them that accused did bad things to her. Thereafter they started to play again. In cross-examination, PW10 had stated that she did not know what bad thing was done by the accused to the victim.

21. Both PW9 and PW10 are child witnesses below the age of twelve years. Before recording their evidence they were examined by the Court to ascertain their maturity of understanding. They have answered properly to the questions put to them and it is found that they had attained the maturity of understanding and therefore their evidence had been recorded.
22. PW11 is Tulshi Gour. In her evidence PW11 had deposed that she knew nothing about the incident. Cross-examination of PW11 had been declined by the defence.
23. PW12 is Shila Munda. In her evidence PW12 had deposed that she only heard that at the time of occurrence the accused asked the victim and her daughter Sunita to pluck some vegetables from his land. Thereafter what had happened is not known to her. Cross-examination of PW12 had been declined by the defence.
24. PW13 is UBC 40 Bhabiram Mochahary. In his evidence PW13 had deposed that on 30-03-18 he was posted as constable at Harisinga PS. During that time IO of this case Naren Ch. Swargiary was SI of police at Harisinga PS. He had already died in a car accident on 12-07-18. As per the case diary it appears that SI Naren Ch. Swargiary investigated the Harisinga PS case No. 20/2017 as per the endorsement of the then OC Dipankar Gogoi who had received an FIR from Sikander Paik, and after completion of the

investigation he submitted the charge sheet. As PW13 worked along with him and as such he was acquainted with his handwriting and signature. Ext. 2 is the FIR. Ext. 2(1) is the signature of OC Dipankar Gogoi with a note of registration of the case which is known to PW13. Ext. 3 is the sketch map. Ext. 3(1) is the signature of Lt. SI Naren Ch. Swargiary which is known to PW13. Ext. 4 is the charge sheet. Ext. 4(1) is the signature of Lt. SI Naren Ch. Swargiary which is known to PW13. Cross-examination of PW13 had been declined by the defence.

25. On careful scrutiny of evidence on record it appears that there is no eye witness to the incident. PW1, the father of the victim had come to know about the incident from his wife. PW7, the mother of the victim deposed that she was informed about the incident by the victim. In cross-examination she revealed that she was first informed about the incident by her daughter's friend Sunita. PW7 has also revealed in cross-examination that when her daughter did not state anything to her about the incident she beat her on her back and buttock. Then only the victim narrated about the incident. PW2 was informed about the incident by one Surabhi Tanti. While PW3 was informed by the father of the victim girl. PW5 and PW6 are the nurse and doctor of Hatigarh Tea Estate hospital respectively. Their evidence is to the effect that the victim was brought to their hospital for medical examination and when they came to know that the case was of sexual assault, they referred the victim to Harisinga PHC. PW8 who is an employee of Hatigarh Tea Estate came to know about the incident from the Manager of the Tea Estate. With the direction of the Manager, PW8 came alongwith the parents of the victim to Harisinga P.S. for lodging the FIR. PW11 did not know anything about the incident. The evidence of PW12 is also no in support of the prosecution case. PW12 had only heard that at the time of occurrence the accused asked the victim and daughter of PW12 to pluch some vegetables from his land. Thus from the evidence on record it is found that the most material witnesses of the case are PW9, the victim and PW10 Sunita Munda, who according to the victim was

alongwith her at the relevant time. The evidence of PW9, the victim is that the accused did bad things to her and at that time Sunita was with her. The accused also gave her and Sunita some money to buy toffee. In cross-examination, PW9 had stated that she did not know as to what bad things the accused did to her. Thus from the evidence of the victim it appears that the victim could not even state as to what the accused did to her. She simply stated that the accused did bad things with her which might be the result of tutoring as evidently the parents of the victim had inimical relationship with the accused. What has also been transpired from the cross-examination of PW7, mother of the victim that only when she beat the victim she narrated about the incident. It is common experience that a child is most susceptible to tutoring. Both on account of fear and inducement a child can be made to depose what actually has not happened. Moreover, both PW1 and PW7 have deposed that the victim narrated to them that accused took her into a room, put off her pant laid her on a bed and mounting on her committed rape but medical evidence found no injury on the private parts of the victim. At the time of incident the victim was aged about six years. Had there been any sexual assault committed upon a six years old minor girl as narrated by PW1 and PW7 definitely there would have been injury on her private parts. In absence of medical evidence it is unsafe to rely on the testimony of PW1 and PW7, more particularly when the victim herself has not stated anything what bad things the accused did to her. Though as per medical evidence the hymen of the victim was found absent but in cross-examination PW4, the Medical Officer has specifically stated that hymen of a girl may tear even before attaining puberty if she falls on a hard substance or riding bicycle. It is also evidence from the medical evidence that the injuries found on back and buttock of the victim were inflicted by the mother of the victim.

26. The friend with whom the victim was playing at the time of incident has been examined as PW10. According to PW10 on the date of occurrence as asked by the accused they pluck some leafy vegetables from the cultivation

of the accused and handed over the vegetables to the accused. Thereafter, the victim went into the house of the accused while PW7 remained outside with her friends. According to PW10 after few moments the victim came out and told that the accused did bad things with her. PW10 too did not know what bad thing was done by the accused to the victim.

27. Thus from the evidence on record it appears that the testimony of prosecution witnesses are not consistent and specific as to what had actually happened on the date of occurrence. The parents of the victim girl narrated about the incident in a manner that neither the victim nor her friend, PW10 has disclosed. There are material improvements in the evidence of PW1 and PW7 and as such a reasonable doubt arises as to the truthfulness of their testimonies. Moreover, the mother of the victim girl has offered two explanations for beating the victim after the incident. While in her examination-in-chief she stated that she beat her daughter with lathi on her back and buttock for going to the house of the accused, but in cross-examination she revealed that when the victim did not state anything about the incident she beat her. It is found from the evidence of PW7 that she was offended as her daughter visited the house of the accused. Taking into account the conduct of mother of the victim punishing the victim for not disclosing anything against the accused or for visiting the house of the accused whatever reason that it may be, and the revelation of the victim in cross-examination that she could not state what bad thing the accused did to her, the possibility of tutoring the victim by her parents cannot be ruled out in this case.

28. In view of above discussions it is found that there are material discrepancies in the evidence of prosecution witnesses. While the victim had stated that PW10 was with her at the time of incident but PW10 had deposed that she was outside with her friends when the victim went inside the room of the accused. Both PW9 and PW10 could not say what the accused did to PW9. The parents of the victim girl had stated something

what neither the victim nor her friend, PW10 had disclosed before the Court.

29. Hence, it is found that prosecution has failed to prove the charge leveled against the accused beyond all reasonable doubt.

30. Situated thus the point for determination is decided in the negative and against the prosecution.

### **ORDER**

31. In the result, the accused Suklal Lohar is found not guilty under Section 4 of POCSO Act and acquitted of charge under Section 4 of POCSO Act and set with liberty forthwith.

32. Bail bond executed by the accused Suklal Lohar and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

33. Judgment is signed, delivered and pronounced in the open court today the 16<sup>th</sup> day of August, 2019.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**IN THE COURT OF ADDL. SESSIONS JUDGE:.....UDALGURI.**

**Special (POCSO) 14/2017**

**APPENDIX**

(A) Prosecution Exhibits :

Ext.-1: Medical Report.

Ext.-2: FIR.

Ext.-3: Sketch map.

Ext.-4: Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Saikan Paik.

PW2- Ajoy Tanti.

PW3- Jitu Khalko.

PW4- Dr. Amit Rajbongshi .

PW5- Bulu Kumari.

PW6- Dr. Michel Baghawar.

PW7- Kulmonti Paik.

PW8- Surabhi Tanti.

PW9- Victim-A.

PW10- Sunita Munda.

PW11- Tulshi Gour.

PW12- Shila Munda.

PW13- UBC Bhabiram Mochahary.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)  
Addl. Sessions Judge.  
Udalguri.