

GAHC010165402021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/39/2021

TIKRU TANTABAI
SIVASAGAR, ASSAM.

VERSUS

THE STTE OF ASSAM
REP. BY PP, ASSAM.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant : Mr. M. Dutta Amicus Curiae.

For the respondent : Ms. B. Bhuyan Additional PP, Assam.

Date of hearing & Judgment : 28.07.2023

JUDGMENT AND ORDER (ORAL)

(M. Zothankhuma, J)

Heard Mr. M. Dutta, learned Amicus Curiae and Ms. B. Bhuyayn, learned Additional Public Prosecutor for the State.

2. This appeal is directed against the impugned judgment dated 06.01.2021 passed by the learned Special Judge, Charaideo, Sonari, in connection with Special (P) Case No. 14/2018, convicting the appellant under Section 6 of the POCSO Act, 2012 and sentencing him to undergo rigorous imprisonment for life with a fine of Rs.5,000/-, in default to undergo simple imprisonment for 3 (three) months.

3. The Prosecution case in brief is that the victim girl (PW-12) submitted an FIR dated 24.04.2018, stating that she was a 14 years old girl and that her stepfather had been committing bad act upon her for a long time since the death of her mother. As a result of the above, she was 6 (six) months' pregnant. She did not disclose the matter to her neighbours as her stepfather had threatened to kill her. She told one Accredited Social Health Activist (ASHA) about the matter, who accordingly brought her to their neighbours and then to the police outpost.

4. In pursuant to the FIR submitted by the victim girl (PW-12), Sonari P.S. Case No.64/2018 under Section 6 of the POCSO Act, 2012 was registered. After completion of the investigation by the case Investigating Officer (IO), charge-sheet was submitted, on the IO having come to a finding that a *prima facie* case under Section 6 of the POCSO Act, 2012 and Section 376(2)(f) IPC was made out against the stepfather of the victim girl, i.e. the appellant. Charges under Section 6 of the POCSO Act, 2012 and under Section 376(2)(f) IPC were framed against the appellant.

5. 12 prosecution witnesses were examined by the learned Trial Court, besides one Court Witness. The appellant was also examined under Section 313

Cr.P.C. Thereafter, the learned Trial Court came to a finding that the appellant had committed the offence under Section 6 of the POCSO Act, 2012 against the victim girl, who was 13 years at the time of the incident. Consequently, the appellant was convicted under Section 6 of the POCSO Act, 2012 and sentenced accordingly.

6. The learned Amicus Curiae submits besides minor discrepancies being made by PW-12 in her evidence, wherein she had referred to Tikru Tantabai as her stepfather's brother instead of her stepfather and that she did not know the contents of the FIR, there is no discrepancy in the evidence made by the victim girl vis-a-vis her statements made under Section 161 Cr.P.C. and 164 Cr.P.C. The learned Amicus Curiae also submits that a child has been born to the victim girl due to the illegal act of the appellant, who has been given for adoption.

7. Ms. B. Bhuyan, the learned Additional Public Prosecutor submits that the appellant was called to a public village meeting, wherein the appellant confessed to his crime in front of his fellow villagers. The villagers, who heard the appellant confessing that he had raped his stepdaughter, having adduced evidence to that effect before the learned Trial Court and the fact that a child had been born to the minor girl clearly proved the guilt of the appellant. Accordingly, there being no reason to interfere with the impugned judgment of the learned Trial Court, the appeal should be dismissed.

8. We have heard the learned counsels for the parties.

9. The evidence of PW-1, PW-2, PW-3, PW-4 and PW-6 is to the effect that there was a public meeting called in the village with regard to accusation made

by the victim girl against the appellant. In the said public meeting, the appellant confessed to having made the victim girl pregnant. Thereafter the villagers handed over the appellant to the police.

10. The evidence of PW-5 is that the local people came to know of the bad relations between the appellant and the victim girl, due to which the appellant was arrested by the police.

11. The evidence of PW-7, PW-8 and PW-9 is to the effect that they came to know that the appellant had caused the victim girl to become pregnant and that the appellant was handed over to the police by the local people.

12. The evidence of PW-10, who is the Doctor is to the effect that there was fetal movement inside the uterus which was found to be 28 weeks in size. According to radiological evidence, the age of PW-12 was 15 to 17 years.

13. The evidence of PW-11 (IO) is to the effect that he registered the FIR after making a General Diary Entry (GDE). He recorded the statement of the victim, the local people etc. He also drew a sketch-map and the statement of the victim was recorded under Section 164 Cr.P.C. The Medical and School Records were also called by him and after completion of the preliminary investigation, he handed over the case to the Officer-in-charge, who forwarded the charge-sheet to the Court.

14. The evidence of PW-12 is to the effect that her father had died 5 (five) years ago and thereafter her mother had married the appellant. Her mother also

died 4 (four) years ago. Thereafter she lived with her brother and her stepfather. The incident occurred 2 (two) years ago. PW-12 used to work in the house of others as a domestic helper and the appellant used to give her water to drink. After drinking she always became unconscious. She came to know that the appellant raped her several times and became pregnant. After lodging the FIR, police took her to Aahana Shelter Home, where she gave birth to one boy, which was given for adoption. She also stated that she gave a statement in the Court and that she filed the case.

15. The evidence of the prosecution witnesses clearly show that the victim girl became pregnant due to the appellant raping her. Further, the victim girl gave birth to a boy. There is nothing in the evidence recorded by the learned Trial Court, to show that the evidence given by the prosecution witnesses were controverted by the appellant. Further, no stand has been taken that the baby boy that had been given birth to by the victim girl, was not the son of the appellant. Though PW-12 had wrongly stated in her evidence that Tikru Tantabai was her stepbrother's brother, the same has been corrected in the further recording of the evidence of PW-12, where she stated that the accused was her stepfather. With regard to the statement made by the victim girl in her cross-examination that she did not know the contents of the FIR, we are of the view that the said statement is not fatal to the prosecution case, inasmuch as, the fact that the appellant having raped the victim girl and the fact that the baby boy was born out of the criminal act is not in doubt.

16. The evidence of the Court Witness is only with respect to the fact that he could not serve summons to the victim girl.

17. In his examination under Section 313 Cr.P.C., the appellant has basically made a blanket denial of the evidence recorded against him by saying that the evidence was false. In the case of ***Rajkumar vs. State of M.P.***, reported in ***(2014) 5 SCC 353***, the Supreme Court has held that complete denial / silence / non-explanation of incriminating materials would entitle a Court to draw an inference, including an adverse inference against the accused as may be permissible in accordance with law.

18. In view of the evidence of the Doctor which proved that the minor girl was made pregnant and gave birth to a baby, besides the evidence having clearly proved that the appellant was the perpetrator of the crime under Section 6 of the POCSO Act, 2012, we do not find any ground to interfere with the impugned judgment.

19. The appeal is accordingly dismissed. Send back the LCR.

20. In appreciation of the assistance provided by Mr. M. Dutta, learned Amicus Curiae, his fees as per the fee structure should be paid by the Assam State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant