

**IN THE COURT OF THE Addl. SESSIONS JUDGE CUM
SPECIAL JUDGE, POCSO, DHUBRI
Present: Smt. Poli Kataki, A.J.S.
Addl. Sessions Judge cum Special Judge, POCSO, Dhubri
Special Case No.346 of 2022
Golakganj PS case No.109 of 2022
Under Section 376 of IPC, r/w Section 4 POCSO Act, 2012**

ORDER

01.12.2022

Shri Uttam Kumar Sarkar, learned Special P.P. Dhubri is present.

The IO has filed Offence Report No. 579 of 2020 against CCL Sahidul Hoque.

The brief facts of the case is that on 02.02.2017, the Complainant lodged an Ejahar before the I/C Halakura Police Outpost alleging inter-alia that on 01.02.2017 his minor daughter/Victim[X] aged 6 years had gone to Jinkata School to watch Saraswati Puja , however, at about 1 /2 pm, the CCL enticed the Victim[X], fed her chocolate, biscuit etc . from shop and took her to a bamboo grove ad committed rape upon her. When the Victim[X] became physically ill and disclosed the incident at home, they became aware of the same. On the basis of the said ejahar, Golakganj P.S. case No. 109 /17, u/s 376 of IPC, r/w Section 4 POCSO Act, 2012 was registered and taken up for investigation.

During the course of investigation, the IO of the case had apprehended Sahidul Hoque and in the forwarding report, his age was mentioned as 17 years. The CCL was produced before the JJB, Dhubri and he was forwarded to Observation Home at Boko.

After completion of investigation, the IO has filed Offence Report No. 579 of 2020 against CCL Sahidul Hoque under Section 376 of IPC, r/w Section 4 POCSO Act, 2012.

I have gone through the Offence report including the case record of the instant case. During the course of investigation, the IO had seized the School Certificate of the CCL issued by head-master of Kherbari High School dated 30.02.2017. As per the School Certificate of the CCL issued by the Head Master Kherbari High School, the date of birth of the CCL is 21.06.1999.

In the instant case, the incident took place on 01.02.2017 and date of birth of the CCL is 21.06.1999 i.e. on the date of incident the age of Sahidul Hoque was less than 18 years. Thus, on the date of incident his age was below 18 years and he is the juvenile and being so the provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 is applicable to Sahidul Hoque.

Further, Section 34(1) of the POCSO Act, 2012, which provides for procedure in case of commission of offence by child and determination of age by Special Court which is as follows:-

“ Where any offence under this Act is committed by a child, such child shall be dealt with under the provision of the Juvenile Justice (Care and protection of Children) Act, 2000”.

Under Section 15 of the Act, in case of a heinous offence alleged to have been committed by the child who has completed or above the age of 16 years the Board is required to carry a preliminary assessment with regard to his mental and physical capacity to commit such offence and thereafter send a preliminary report to the Children Court. It is only after receipt of preliminary assessment report from the Board under section 15 of the Act, the Children Court may decide that there is a need for trial of the child as an adult as per the provision of the Cr P C and prior to that the Children Court does not have any jurisdiction to deal with any matter pertaining to a child in conflict with law.

In view of the above provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 and POCSO Act, 2012, only the Juvenile Justice Board has jurisdiction to deal with any person who is apparently a child alleged to be in conflict with law.

Transmit the relevant copies of the record of Golakganj P.S. case No. 109 /17 and the Offence Report No. 579 of 2020 along with this order to the Juvenile Justice Board, Dhubri for disposal the matter in accordance with the Provision of law.

Inform accordingly.

[P. Kataki]
Addl. Sessions Judge cum
Special Judge, POCSO, Dhubri