DISTRICT: DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri T. Kalita,

Special Judge, Dhubri

Special Case No. 14 OF 2018

U/S 4 of POCSO Act, R/w Section 342/376 IPC Corresponding to G.R. Case No.1082/2017

State of AssamComplainant

Versus

Ashik Jaman Mondal @ Bachha Accused person

Charge framed on : 23-05-2018

Evidence recorded on : 15-06-2018, 05-02-2019

03-05-2019, 06-12-2019

Statement recorded on : 17-12-2019

Argument heard on : 10-02-2020

Judgment delivered on : 17-02-2020

Advocates who appeared in this case

Shri U.K. Sarkar, Special P.P. for the Prosecution

Shri Y. A. Bepari, Advocate for the Defence

JUDGMENT

1. A Special Case was registered u/s 4 of POCSO Act, R/W section 342/376 IPC against the accused person namely Ashik Jaman Mondal @ Bachha on the basis of an FIR laid by the complainant / victim X (The name is withhold considering the nature of the case) on 18-03-2017 to the effect that she was having love affair with the accused for three years. He promised her to marry and as a result she succumbed to his lust and has sex with her several times. He further took her on 16-03-2017 at about 06:30 p.m. and also committed rape on her. However, he declined to marry her only when she proposed her to marry. The accused, however, was trying to marry another girl.

- **2.** Police accordingly, investigated the case and upon completion of investigation laid charge sheet against the accused Ashik Jaman Mondal @ Bachha to stand trial u/s 4 of POCSO Act, R/W section 342/376 IPC.
- **3.** Upon appearance, the accused was furnished copies and formal charge u/s 4 of POCSO Act, R/W section 342/376 IPC was framed, read over and explained to him to which he pleaded not guilty and claimed for trial.
- **4.** During trial, the prosecution has examined as many as six witnesses. The examination of the accused was recorded u/s 313 Cr.P.C. and his plea is found total denial. However, he adduced none.
- **5.** I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following point for determination:

Whether the victim was subjected to penetrative sexual assault on being allure that she would be married by him, but subsequently declined being the victim is about 17 years old?

DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS

6. The prosecution has examined altogether six number of witnesses out of which PW-1 is one Abdul Batin, father of the victim girl. According to him, about one year back, he went to market and was informed by his wife that his daughter X was not in his residence. Accordingly, he returned home and started searching for his daughter, but could not trace her out. However, one VDP Secretary Nur Mahammad informed him that his daughter was recovered and she was brought by said Nur Mahammad to his house. On being asked, his daughter told him that accused Ashik Jaman Mondal took her to his house and committed rape on her. However, after two days, his daughter has lodged the ejahar. A village bichar was held before filing the ejahar wherein the accused was imposed a fine of Rs. 60,000/- by the village elders, but his daughter refused to accept the same. He stated that his daughter studied up to class VIII. He does not know when and how his daughter had left his house. The house of the accused is near

to his house. He did not search his daughter in the house of the accused and the houses of the neighbours. He denied the suggestion that he did not disclose before the I.O. that his daughter told him that accused Ashik Jaman Mondal took her to his house and committed rape on her. He also denied the suggestion that there no village bichar was held in the house of the VDP Secretary where the villagers held the accused guilty and imposed fine of Rs. 60,000/-.

- 7. PW-2 is the informant / victim X. According to her, the accused Ashik Jaman Mondal is her neighbour. He expressed his love affair to her and promised her to marry as a result she developed sexual relationship with him. The accused took her to his house and also confined her in a room for two days. Her parents started searching her, but VDP person took her to the police station wherein she filed the case. Her statement was recorded by the police and was medically examined. Her statement was also recorded by Magistrate vide Ext-2. Ext-1 is the ejahar. She categorically stated that she has not mentioned her age in the ejahar. Also has not stated that she was minor at the relevant time rather she stated before the Magistrate that she is aged about 19 years while was recording her statement. She also stated before the I.O. that she is aged about 19 years. She also stated her age 19 years before the Medical Officer. She had love affair with the accused since last three years. The house of the accused is near to her house. There are many houses surrounding to their house. While she was taken by the accused, his family members were present in the house. However, she denied that she did not disclose before the Investigating Officer that the accused gagged her mouth, confined her in a room and thereby committed rape on her by force.
- **8.** PW-3 is one Abdul Mozid. He does not know anything about the occurrence. Though he was declared hostile by the prosecution, but no premium has been elicited for the prosecution case. However, he stated that there is a land dispute in between the parties. The parties are not his relatives. However, after the incident the victim married another boy.
- **9.** PW-4 is Subal Ch. Ray. She also does not know anything about the occurrence. She was also declared hostile by the prosecution, but on cross-

examination by the prosecution nothing has been framed to extract premium. He too stated that there was a land dispute between the parties.

- **10.** PW-5 is the Investigating Officer namely SI Subal Ch. Ray of Gauripur Police Station. He investigated the case, visited the house of the accused, prepared the sketch map, recorded the statement of the witnesses and sent the victim to Dhubri Civil hospital for medical examination and also sent her to the Court for recording her statement u/s 164 Cr.P.C. However, the accused surrendered before the Court. Having completion of investigation, he laid charge sheet against the accused u/s 4 of POCSO Act, R/W section 342/376 IPC to stand trial. He has exhibited the sketch map and charge sheet vides Ext-3 and Ext-4. Ext-3(1) and Ext-4(1) are his signatures. However, he has not collected any documents relating to the age of the victim. But the victim has stated before the Magistrate and the doctor that she is 19 years old. He further stated that victim X did not disclose before him that the accused gagged her mouth, took her to his room and committed rape on her person.
- **11.** PW-6 is the Medical Officer namely Dr. Anjana Chakraborty Sharma. She has examined the victim on 20-03-2017 at Dhubri Civil Hospital. On examination, she found the patient normal. She did not find any injury mark on her body. She also did not find any evidence of sexual intercourse on the victim at the time of examination. However, Hymen was found torn. Accordingly, she has proved the report as Ext-5 together with the Radiological report as Ext-6. Ext-5(1) and Ext-6(1) are her signatures. She further stated that the girl told her she was 19 years old. She further told that Radiological age may vary two years in either side.
- **12.** Now, these much evidences are found available on record. From the evidence of the witnesses as it appears, the following disturbing features have been noticed.
- **13.** The accused was charge sheeted to stand trial u/s 4 of POCO Act only on the ground that the victim girl is below the age of 18 years. But here in the instant case, it palpably clear that she has vehemently disclosed before the police, Medical Officer as well as Judicial Magistrate while recording her statement u/s 164 Cr.P.C. that she is aged about 19 years. The Radiological

report as decipher that her age is below 18 years is an expert opinion which may vary from either side by two years. It is settled that whether there is a difference of ocular evidence that with the medical evidence. Ocular evidence particularly the evidence which emanated from the author himself / herself is taken into consideration since medical evidence is an opinion evidence. Though the prosecution examined as many as six number of witnesses, but none of the witnesses save and except the father and daughter could able to say anything implicating the accused person rather it is the evidence of PW-3 and PW-4 that they do not have any knowledge about the subject matter of the case. Though they were declared hostile by the prosecution, but nothing has been elicited to extract any premium for the version of the prosecution to lend in its support. So, the evidence of PW-3 and PW-4, the independent witnesses have lost its significance in the eye of law. PW-5 and PW-6 are the Investigating Officer and Medical Officer respectively and they are formal witnesses and have to be deposed on the document that they have collected in a criminal case. Documentary evidence will have to be given least precedence over the sanctity of ocular evidence. The version of PW-2 the victim herself led me come to an irrestible conclusion that she is having love affair with the accused for which she succumbed to her body to the lust of the accused. Moreover, she did not disclose before the Investigating Officer that the accused gagged her mouth, confined her in a room and thereby committed rape on her is found a major inconsistence and contradiction with the statement made by her u/s 164 Cr.P.C. So, the evidence made by her is found diametrical opposite to the statement made by her before the police u/s 161 Cr.P.C. Moreover, she has not stated anywhere that she is minor at the time of occurrence. So, question of implicating the accused u/s 4 of the POCSO Act is not arising. As such the accused is acquitted from the purview of charge u/s 4 of the POCSO Act beyond all reasonable doubt.

14. Now I am to see whether the accused is found liable in any other section of the Penal Court that has been charged u/s 376/342 IPC. The evidence as appears goes to show that she did not disclose before the I.O. that she was confined in a room by the accused and committed rape on her. So, she is found contradicted with the statement recorded by Investigating Officer with that the evidence made before the Court. So, the evidence adduced by her has got no

Special Case No. 14 of 2018

significance in the eye of law. As such no offence is found to be committed by

the accused u/s 342 IPC.

15. Now the offence as alleged regarding section 376 IPC, the evidence is

found very smoky. It is the evidence of the prosecutrix herself that she is

subjected to lust of the accused every time since she is being allure and

promised to marry as a result of which she succumbed to her body to the

accused. So far an offence u/s 376 IPC, the ingredients of having commission of

rape on a person against her will against her consent provided that she is minor,

but here in the instant case she is major. She is having love affairs with the

accused and has voluntarily succumbed to herself to the accused probably by

urging her sexual interest.

16. Having considered all these aspects, I am of the view that the prosecution

has failed to prove the charge against the accused person beyond all reasonable

doubt. I have not got any alternative, but acquit the accused from the purview of

charge u/s 4 of POCSO Act, R/W section 342/376 IPC by setting him at liberty

forthwith.

17. The Bail Bond so furnished by the bailor stand cancelled.

18. Signed, sealed and delivered in the open Court on this the 17th day of

February, 2020, at Dhubri.

(T. Kalita) Special Judge, Dhubri

Dictated & corrected by me.

(T. Kalita) Special judge, Dhubri

6 | Page

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Abdul Batin

PW-2 X (Complainant/victim)

PW-3 Abdul Mozid

PW-4 Subal Ch. Ray

PW-5 Subal Ch. Ray (I.O.

PW-6 Dr. Anjana Chakraborty Sharma (M.O)

2. PROSECUTION EXHIBIT:

Exhibit-1 Ejahar

Exhibit-2 Statement of the victim recorded u/s 164 Cr.P.C

Exhibit-3 Sketch map

Exhibit-4 Charge sheet

Exhibit-5 Medical report

Exhibit-6 Radiological report

(T. Kalita) Special Judge, Dhubri