Present :- Mr. R.A. Tapadar, AJS

Date: 29.02.2020.

SPECIAL CASE NO. 34 of 2019

(Under Section 120(B)/376(3)/34 IPC)
The State of Assam
-Versus-

- 1. Md. Jomer Ali
- 2. Md. Nurul Hoque

......Accused Persons.

APPEARANCE

For the State......Mr. Uttam Kumar Sarkar, learned Spl.P.P.

For the DefenceMr. Nur Aktar Hussain, learned Advocate.

Date of framing charge : 07.12.2019

Evidence recorded on :-14.02.2020.

Argument heard on :-29.02.2020

Judgment delivered on :- 29.02.2020.

JUDGMENT

- 1. Md. Jomer Ali and Md. Nurul Hoque (hereinafter referred to as "accused") are before this court facing accusation for the commission of offence U/s. 120(B)/376(3)/34 I.P.C.
- 2. The prosucution case, in brief, is that the informant, Kobed Ali lodged an FIR before the OC Dhubri Police Station on 10.04.2018 and *inter-alia* stated that on 10.4.18 at about 9-30 P.M., accused Abjajul Islam on ill-

advice of accused Jomer Ali came to his house situated at Falimari New Market. The informant stated that when her daughter came out to attend the call of nature near the tubewell, the accused Abjajul Islam and Nurul Hoque forcibly undressed her had sexual intercourse with her. The informant stated that his daughter made hue and cry, the neighbours came and apprehended the accused Nural Hoque and Abjajul Islam managed to escape. The informant stated that two mobile handsets were recovered from the possession of accused Nural Hoque which were given to Unit Member Bakkar Ali. The informant stated that there was delay in lodging the FIR as he was expecting village meeting in respect of the incident. The informant prayed for action against the accused persons.

- 3. Based on the FIR, the police registered Dhubri PS Case No. 440/18 under Section 120(B)/448 I.P.C read with section 4 of the POCSO Act. The O/C Ajit Kumar Ray entrusted Smti. Gita Sarkar to take investigation of the case. During investigation Sec.376(3) IPC was added. The accused person obtained anticipatory bail from the Hon'ble Gauhati High Court. The police after investigation, submitted charge-sheet against the accused person under Section 120(B)/447/376(3) I.P.C and Section 4 of the POCSO Act.
- 4. The accused Abjajul Islam turned out a child in conflict with law and as such, the case was splitted up by order dated 29.5.19 and forwarded to the JJB, Dhubri. The learned Special Judge transferred this case to this court for trial of accused Nural Hoque and Jomer Ali. Accordingly, charges U/s. 120(B)/376(3)/34 IPC were framed against the accused persons. The

charges were read over and explained to the accused persons to which they pleaded not guilty and claimed trial.

- 5. The prosecution in order to establish the guilt of the accused persons examined as many as 2 (two) witnesses including the victim. The defence choses not to lead any evidence. The statement of the accused person under Section 313 Cr.P.C. is recorded. The accused person pleaded his innocence.
- 6. Heard both sides.

7. **POINS FOR DETERMINATION:-**

- i) Whether on 09.04.18 at about 9.30 PM, the accused persons hatched a criminal conspiracy to commit rape of the minor daughter of the informant and thereby committed an offence punishable under Section 120(B) IPC?
- ii) Whether on the same date and time, the accused persons in furtherance of common intention committed rape of the daughter of the informant and thereby committed an offence punishable under Section 376(3)/34 I.P.C?

8. **DISCUSSION, DECISION AND REASON THEREOF:-**

I have gone through the FIR, the evidence on record and also considered the submissions of the learned Special Public Prosecutor and also the learned counsel of the accused persons. The informant, PW-1 in his evidence stated that his daughter had love affair with Abjajul Islam and presently she married with Abjajul Islam and living as husband and wife.

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PW-2, the victim stated in her evidence stated that she had love affair with Abjajul Islam. Now she married with the accused person. Due to misunderstanding, her father lodged the FIR.The evidence on record does not discloses the ingredients of Sec.120(B)/376(3)/34 I.P.C. Accordingly, the accused persons are aquitted from the charges under Section 120(B)/376(3)/34 I.P.C and set at liberty, forthwith.

The bail bond of the accused person shall remain in force for a period of six months in terms of Section 437A Cr.P.C.

Given under my hand and seal of this court on this 29th day of February,2020.

Dictated & corrected by me

Special Judge, Dhubri

Mr. R.A. Tapadar, AJS Special Judge, Dhubri

<u>APPENDIX</u>

A. **Prosecution Witnesses:**

PW- 1 Md. Kobad Ali

PW-2 Ms. 'X'

B. **Documents Exhibited by Prosecution:**

Ext-1 Ejahar

C. **Defence Witnesses** :- Nil

D. **Defence Exhibit**: Nil

Mr. R.A. Tapadar, AJS Special Judge, Dhubri