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IN THE COURT OF ADDITIONAL SESSIONS JUDGE (FTC), DARRANG, MANGALDAI.

PRESENT: Mr. J.M.Barman, A.J.S.,

Additional Sessions Judge(FTC),

Darrang, Mangaldai.

Special (POCSO) Case No. 22 of 2018.

(U/S: 376 of I.P.C. R/W 4 of POCSO Act)

(Forwarded by the learned Chief Judicial Magistrate, Darrang, Mangaldai)

State of Assam

- Versus -

Md. Dilip Ali @ Dilip Hussain,

S/O. Md. Muktar Ali, Vill.- No.1, Suktaguri,

P.S. Sipajhar,

Dist.- Darrang (Assam),

...... Accused person.

APPEARANCE:

Advocate for the State : Sri Dulal Kr. Ghosh, learned Addl.P.P.,

Advocate for the accused: Md.Nazrul Hussain, Learned Advocate.

Date of framing charge : 15-06-2019.

Date of evidence : 24-09-19, 25-09-19, 13-11-19, 14-11-19.

Date of argument : 3.12.19

Date of judgment : 3.12.19

JUDGMENT PROSECUTION CASE

1. The prosecution story, in brief, is that informant Miss Afriza Begum lodged an F.I.R before the Officer-In-Charge, Sipajhar Police Station on 23-03-2018, alleging that on 21-3-18 at about 3.20 A.M in the wee hour, the accused Dilip Ali by inducing her to marry, eloped her from

her house and kept her in his house and forcefully established physical relation with her against her will. Thereafter on 22-3-2018 in the morning at about 5.00 A.M, the accused Dilip Ali, Dulal Ali and Muktar Ali together assaulted her by means of "lathi" and drover her out from their house. Later on, her family member had taken her from the gateway of the accused. Hence this case.

<u>INVESTIGATION</u>

2. Having received of the ejahar from the informant, the officer in charge Sipajhar P.S. registered a case as Sipajhar P.S.Case No. 221/2018, U/S. 376/420/325/34 of IPC and entrusted A.S.I. Dhiren Saharia to investigate the case. Upon completion of investigation, the I.O. filed Charge-sheet against the accused Dilip Ali @ Dilip Hussain, under section 366-A/376/417 of IPC R/W Section 4 of POCSO Act. However, other two accused were not sent up for trial.

TRIAL

3. After receiving the case record , from learned Chief Judicial Magistrate, Darrang, Mangaldai , by learned Sessions Judge, Darrang Mangaldai, same is registered as Special (POCSO) No. 22 of 2018 and the learned Sessions Judge, Darrang, Mangaldai is pleased to transfer the case record to this court for trial. After appearance of the accused person, copies of the relevant documents were furnished to him and after hearing the submission of the learned Special P.P for the State as well as learned defence counsel on the point of charge and after going through the relevant documents as furnished by the investigating officer under section 173 of Cr.P.C, I have found prima facie material against the accused person under section 366-A of I.P.C read with section 4 of POCSO Act. Accordingly, charge under the above mentioned offence was framed against the accused person and contents of the charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. The prosecution side has examined 6 (six) Nos. of witnesses including the investigating officer and medical officer and exhibited some documents. The statement of accused U/S. 313 Cr.P.C was recorded. The plea of the accused is of total denial. However, he has not adduced any evidence in his defence.

Point for determination:

- **a.** Whether on 21-03-2018 at about 3.20 A.M in the wee hour, the accused committed rape upon the victim X, aged about 17-18 years, in his residence at No.1 Suktaguri under Sipajhar P.S. inducing her on the pretext of marriage and thereby committed an offence punishable under Section 376 of Indian Penal Code ?
- **b.** Whether on the same day, same time and at the same place the accused had committed penetrative sexual assault upon the victim X in his residence and thereby committed an offence punishable under Section 4 of the POCSO Act ?

DISCUSSION, DECISION AND REASONS THEREOF:

- I have perused the evidence on record and also heard the submission of learned defence counsel as well as learned Addl.P.P for State. Let me describe in brief of the evidence adduced by the prosecution side.
- 6. P.W-1 (Afriza Begum), the complainant deposed that she lodged the case against accused Dilip Ali, Dulal Ali and Muktar Ali. The incident took place about 1½ years ago. She had love affairs with accused Dilip Ali for about one year prior to the incident. He proposed to marry her but as he failed to marry her, she had lodged the instant case against him. Ext-1 is the ejahar and Ext-1(1) is her signature. After lodging her ejehar, police personnel produced him before the Judicial Magistrate for recording her statement. Ext-2 is her statement given before the Judicial Magistrate and Ext-2(1) and Ext-2(2) are her signatures.

- 7. At this stage prosecution witness declared as hostile on the prayer of prosecution side. Thereafter she was cross-examined by the prosecution side as well defence side.
- 8. In cross-examination by defence side, she stated that the Ejahar was written by another person. Due to anger, she lodged this case against the accused. She denied that on 21/03/2018 at about 3.20 a.m. in the morning the accused Dilip Ali eloped her to his residence and committed sexual intercourse with her without her consent and thereafter the other family member of accused person physically assaulted her. She gave her statement before the Judicial Magistrate due to her anger. Accused had not committed sexual intercourse with her and had not committed physical assault upon her. She had not produced any school certificate or birth certificate before the Investigating Officer. .
- 9. P.W-2 (Rafique Ali), deposed that the complainant is his daughter. He knows the accused Dilip Ali. The incident took place about 1 ½ years ago. On the date of occurrence at about 3.00 a.m. in the morning accused eloped his daughter to his residence with a purpose to marry her. But accused did not marry her. Thereafter they took their daughter from nearby road of the residence of the accused person. Thereafter his daughter lodged the case against the accused person.
- 10. In his cross-examination, he denied that the accused had not eloped his daughter to his residence. He denied that as his daughter lodged the case, he had deposed falsely in favour of his daughter.
- 11. P.W-3 (Jamir Ali @ Jamiruddin Ahmed) deposed that he knows the complainant as well as the accused person. He has further deposed that he does not know anything about the incident.

- 12. At this stage prosecution witness declared as hostile on the prayer of prosecution side. Thereafter he is cross-examined by the prosecution side as well as by the defence side.
- 13. In his cross examination by the defence side he denied that he has deposed in favour of the accused person.
- 14. P.W-4 (Sayad Ali) deposed that he know the complainant. He also knows the accused person, who is a co-villager of his village. He came to know from the village people that accused eloped the victim girl. Police had not interrogated him in connection with the instant case.
- 15. At this stage prosecution witness declared as hostile on the prayer of prosecution side.
- 16. In cross-examination by defence, he denied that he had not heard about the fact that the accused Dilip Ali eloped the victim girl.
- 17. P.W-5 (Dr. Archana Baruah), the M.O. deposed that on 24-3-18 she was working as Senior Medical & Health Officer at Sipajhar Block PHC. On that day at 1-20 P.M., she examined Afriza Begum, D/O. Md. Rafique Ali of Village-No.1 Suktaguri, P.S. Sipajhar in connection with Sipajhar P.S. Case No 221/18, U/S. 376/420/325/34 IPC, escorted by Dipali Das, Home Guard. The girl was examined in presence of Nibedita Kalita, GNM, in full consent.

Identification Marks- 2 black moles over neck right side.

History of alleged assault: on 20-3-18 at 3 P.M. as per version of the victim.

History of Menstruation – on 11-3-18.

On examination, she found the following:-

Physical Examination: Height- 5', Weight- 45 K.G. Teeth 28 Nos. Hair-Long, Axillary hair- Present, Pubic Hair- Present, Breast-Developed, Hymen-Torn, Valve- Developed, Uterus- Developed, Vagina- Developed, Libia; Mazora- Developed Libia: Minara-Developed.

Any injury mark in her private parts: Not seen

Mental condition- Good .

Vaginal swab examination for Spermatozoa- No Spermatozoa is seen in the slide vide Report No.31 .

RADIOLOGICAL EXAMINATION:

X-Ray for age determination -Approximate age- 17-18 (Seventeen to Eighteen years) as per Radiological Report.

Examination of Urine: For pregnancy test- Negative. (-ve).

- 18. In her opinion the approximate age of the victim is 17-18 (
 Seventeen to Eighteen) years as per Radiological Report. And there is
 no injury mark in her private area. She exhibited the medical
 examination report as Ext-3 and her signature as Ext-3(1).
- 19. Defence side declined to cross-examine him.
- 20. P.W-6 (Dhiren Saharia) deposed that on 23-03-2018, he was at Sipajhar police station as an A.S.I of police. On that day after receiving the ejahar lodged by the complainant, the Officer-in-Charge of Sipajhar P.S registered a case being No. 221/18, Under Section 376/420/325/34 of IPC and entrusted the preliminary investigation to him. He took the statement of the victim/complainant at the police station. On the same day he went to the place of occurrence and visited the place of occurrence, took the statements of witnesses, drew the sketch map of the place of occurrence. Ext- 4 is the sketch map and Ext-4 (1) is his signature. The victim of the instant case medically examined on 24/03/2018 at Sipajhar PHC and later on, he had collected the medical

report of the victim. Accused persons, namely Muktar Ali and Dulal Hussain appeared before the Sipajhar P.S on 12.05.18, after obtaining anticipatory bail from the court. On 07/06/2018 the other accused person, namely, Dilip Ali @ Hussain appeared before the Sipajhar P.S. after obtaining anticipatory bail from the court. After interrogation, the accused person he was allowed to go on bail as per direction of the honourable court. After completion of his investigation he had submitted Charge- sheet against the accused Dilip Ali Under Section 366-A/ 376/417 IPC R/W Sec. 4 of POCSO Act. Ext. 5 is the Charge-Sheet and Ext. 5(1) is his signature. He had taken the statement of the witness, namely Afriza Begum. She deposed before him by giving her statement that on 21/03/18 Wednesday at about 3.20 am Md. Dilip Ali came to their residence and called her over phone due to which she came out from her room and then he with intention to marry her, took her to his residence and in the kitchen he had committed rape upon her for 4/5 times. At about 5 am in the morning the father of Dilip Ali namely Moktar Ali and Md. Dupash Ali physically assaulted her and drove out her from his residence".

- 21. His cross-examination is declined by the defence side.
- 22. In the the instant case, the victim while lodging the ejahar (Ext1) deposed that on the date of occurrence at about 3:20 AM in the
 morning, the accused person elope her to his residence on a pre-tax
 that he will marry her, and while she went to the residence of the
 accused persons accused person committed rape upon her without her
 consent. But while adducing her evidence before the court the victim
 put forward a totally different story, whereby she had negated the
 story of sexual assault upon her by the accused person on the date of
 occurrence. She specifically denied in her evidence that there is any
 physical relationship that had taken place in the residence of the
 accused person on the date of occurrence without her consent. She
 only deposed that she had a love affairs along with the accused person
 for about one year prior to the incident and although the accused

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person proposed to marry her but later on he failed to marry her due to which, on anger she lodged this instant case against the accused

person.

23. Now, in a case of sexual assault upon a woman, the victim became the star witness and the whole prosecution case depends upon

on the version of the prosecutrix. But where the prosecutrix itself

denied regarding the incident of rape upon her by the accused

persons, there is no any scope for survival of the prosecution case.

24. Considering all this aspect, in my considered opinion

prosecution side failed to prove the charge against the accused person

under section 376 of IPC read with section 4 of POCSO Act beyond all

reasonable doubts. I therefore acquitted the accused person from the

above mentioned charges and set him at liberty forthwith. Bail bond of

the accused person shall be valid for the next six months from the date

of delivery of the instant judgement.

25. Judgement is delivered in open court.

26. Furnish a copy of the judgement to learned District Magistrate,

Darrang Mangaldai as required under section 365 of CRPC,

27. Given under my hand and seal of this court on this 3rd day of

December, 2019 at Darrang Mangaldai.

Sd- J.M Barman

Additional Sessions Judge(FTC),

Darrang, Mangaldai.

Transcribed and typed by me:

<u>Smti S.Devi (stenographer)</u>

(Contd....Appendix)

APPENDIX:

Prosecution witnesses:

PW:1- Afriza Begum (informant-victim)

PW:2- Rafique Ali.

PW:3 -Jamir Ali @ Jamiruddin Ahmed.

PW:4- Sayad Ali.

PW:5- Dr. Arhana Baruah (M.O.)

PW:6- Dhiren Saharia (I.O.).

Prosecution exhibits:

Ext-1, Ejahar.

Ext-2, Statement of victim U/S. 164 Cr.P.C.

Ext-3, Medical Examination Report.

Ext-4, Sketch map.

Ext-5, Charge-sheet.

Defence witnesses:

Nil.

Sd- J.M Barman

Additional Sessions Judge (FTC), <u>Darrang, Mangaldai</u>.