

DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:- Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 19th day of December, 2018.

SPECIAL (P) CASE NO: 37 OF 2016

Under Section

4 of the Protection of Children from Sexual offences Act, 2012.

Read With

376(2)(i) of the Indian Penal Code.

State of Assam

-Versus-

1. Sri Biren Dhan.

..... Accused Person.

This case was taken up for final hearing on 11.12.2018 in the presence of

Sri Basanta Gogoi..... Advocate for prosecution side.

Sri Suresh Phukan..... Advocate of the accused.

F.I.R was lodged on :::::::::: 24.08.2016.

Charge framed on :::::::::: 28.11.2018.

Argument Heard on :::::::::: 11.12.2018.

Judgment Delivered on :::::::::: 19.12.2018.

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JUDGMENT

In this case the accused person is facing trial under section 4 of the P.O.C.S.O act 2012, and alternatively Under Section 376(2)(i) I.P.C

- 1. The case of the prosecution is that, the minor daughter of the informant, while was waiting for her father i.e. the informant on the road near their house, at 10:30 P.M on 19/08/16, then, the accused forcibly took her to a nearby hut and raped her. That, the daughter of the informant did not tell anyone about the incident, but on 21/08/16 the informant came to know about the incident and lodged the F.I.R of this case.
- 2. Later on, a case was registered in this regard, before the Moranhat Police station, bearing its P.S case no 103/16. Police after investigation forwarded chare sheet u/s 8 of the Pocso act against the accused person. Thereafter, case was committed and charge U/S 4 POCSO act 2012 was framed by my ld. Predecessor. Later on charge was again framed as per section 42 of the POCSO act U/S 4 of POCSO act read with section 376(2) (i) I.P.C. The charge was read over and explained to the accused person, to which he, pleaded not guilty and claimed to be tried. Prosecution examined 4 witnesses.
- 3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

4. Points For Determination in this case are:-

i) Whether the accused on 19/08/2016, committed penetrative sexual assault on the daughter of the informant Sri Indra Mura, who was below 18 years at that time?

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ii) and alternatively, whether the accused on 19/08/16, committed rape on the minor daughter of the informant, who at that time was 13 years old?

5. <u>DISCUSSION DECISION AND REASONS FOR THE DECISION</u>

Let us now, discuss evidences on record, concerning the points for determination of this case. In this case the alleged victim was examined as P.W2; the P.W2 in her evidence deposed that, on the date of incident at 10:30, while she came out from her house in search of her father, then, the accused caught hold of her on road. That, while she raised hue and cry, accused left her. That, on the next day she informed the matter to Jina aunty, who told the matter to his father. That, her father lodged this case.

In the cross examination this P.W deposed that a village meeting was held and accused was asked to pay cost of treatment of fever of her and as he did not pay the cost, her father filed this case.

I have considered the evidence of the alleged victim of this case. The evidence of alleged victim failed to contain anything concerning any of the points for determination. The alleged victim never deposed anything against the accused. The crux of her evidence is that accused caught hold of her while she was on a road and case was lodged as the accused failed to pay the expenses of the treatment of the fever of the victim. Now, this evidence contains nothing to attract any of the point for determination.

6. The father of the victim was examined as P.W3, he in evidence deposed that, accused Namina Munda is his daughter. That, after few days of the incident his sister-in-law informed that accused caught hold of his daughter on a road while, she went out. That, it was also informed that the accused left when hue and cry was raised. That, on this he filed the case.

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In cross examination this P.W deposed that, out of anger he has filed this
Charaideo, Sonariase. That, he has no objection if accused is acquitted.



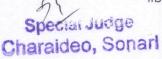
The evidence of the father of the alleged victim yields that the case was lodged by him only out of anger.

7. The P.W4 deposed that after 2/3 days of incident, he, from villagers came to know that, accused committed rape with Namina Munda on road. That, in a meeting victim told that accused had committed rape on her. That, accused denied the allegation.

In cross examination this P.W deposed that, he has no personal knowledge except hearing from others.

I have considered the evidence of the P.W4 and found that his evidence has not been supported by the alleged victim or by the informant. Here the P.W4 deposed that accused raped the victim, but the victim never deposed that accused raped her.

- I have considered the evidences of the most material witnesses of this case. The victim never adduced any evidence which may attract any of the points for determination, neither the informant. They both failed to adduce any specific evidence concerning any of the points for determination. I have considered the evidence of the P.W1 i.e. doctor who examined the victim.
- 9. I have considered the evidences on record, which includes the evidence of the prosecutrix and I find that, there is no iota of evidence to bring the accused person within the ambit of either section 376(2)(i) of I.P.C or section 4 of the POCSO act, 2012 as the alleged victim and other witness never deposed anything in evidence against the accused, concerning any of the points for determination. Here in this case the prosecution has failed to adduce any evidence basing on which we can held that, prosecution has proved the case beyond all reasonable doubt.
- 10. This being the position of this case, in opinion of this court, prosecution has failed to prove the case against the accused person and accordingly the accused Sri Biren Dham is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision





437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 19th day of December 2018.

(S.I.Rahman)

Special Judge
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Appendix

Prosecution Witnesses.

- SI. 1---- Prosecution Witness 1 --- Dr. Duplay Patir.
- SI. 2---- Prosecution Witness 2 --- Miss Namina Munda.
- Sl. 3---- Prosecution Witness 3 --- Sri Indra Munda.
- SI. 4---- Prosecution Witness 4 --- Sri Arjun Mura.

Prosecution Exhibits.

- SI. 1---- Medical Examination report.
- Sl. 1(1)- Signature of the Doctor.

Defence witness.

Nil.

Defence Exhibit.

Nil

(S.I.Rahman)

Special Judge
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