IN THE COURT OF THE SPECIAL JUDGE ::::::: DHUBRI

Present :-Shri J. Borah, AJS Special Judge,Dhubri.

SPECIAL CASE NO.87 OF 2018

U/s.447 I.P.C.

R/W Sec.4 of Protection of Children from Sexual Offence

State of Assam Vs Samiul Alom

.....Accused Person.

Date of Framing Charge :- 13-09-2018

Date of Recording Evidence :-24-09-2018

Date of Argument :- 29-09-2018

Date of Judgment :- 29-09-2018

Advocates Appeared:

For the State of Assam :- Shri S.C. Ray

Learned Addl.P.P.

For the Defence :- Shri R.K. Jain

Learned Advocate.

J U D G M E N T

- 1. Since this case is under section 4 of Protection of Children from Sexual Offence, hereinafter referred to POCSO, so the name of the victim has not been mentioned and she is hereinafter referred to 'X'
- 2. The prosecution case, in brief, is that Abdul Aziz Seikh, the informant lodged an ejahar with the Dhubri Police Station on 23.3.018 informing that 'X' is his granddaughter, aged about 15 years. She is a school going child. On 19.3.018 at about 7-00 P.M 'X' went outside the house to attend natural call. The accused Samiul Alom, all of a sudden, appeared there, caught hold of 'X' and committed rape on her.

So, the informant prayed for taking necessary action against the accused Samiul Alom.

- 3. The Dhubri Police Station received the ejahar and registered vide Dhubri P.S. Case No.332/018 U/s.447/341 I.P.C R/W Sec.4 of POCSO Act. The Dhubri Police Station also investigated the case and having found prima face U/s.447 I.P.C R/W Sec.4 of POCSO Act against the accused Samiul Alom laid the chargesheet before the court for trial.
- 4. The accused Samiul Alom appeared in the court of Sessions Judge, Dhubri and he was furnished copy. The case was, later, on, transferred to this court for trial.
- 5. The Samiul Alom, hereinafter called the accused, appeared in this case. Charge was framed U/s.447 I.P.C R/W Sec.4 of POCSO Act. The charge was read over and exaplined to the accused to which he pleaded not guilty and claimed to be tried.
- 6. The prosecution, in order to bring home the charge against the accused examined three witnesses, namely --
 - 1. Abdul Aziz PW-1
 - 2. Anjuma Bibi PW-2
 - 3. X/victim PW-3.
- 7. Since there found no incriminating evidence against the accused in the evidence adduced by the prosecution witnesses against the accused, so he is not examined U/s.313 Cr.P.c.
- 8. Heard argument for both sides.

9. **POINTS FOR DETERMINATION**:

(i) Whether the accused on 19.3.018 at about 7-00 in the evening at village Silghagri Part-II under Dhubri Police Station committed criminal trespass by entering into the land of the informant-Abdul Aziz Seikh with an intent to commit an offence or to intimidate or insult or annoy informant and others and thereby committed offence U/s.447 I.P.C.

(ii) Whether the accused on 19.3.018 at about 7-00 in the evening at village Silghagri Part-II under Dhubri Police Station committed penetrative sexual assault on the minor child X and thereby committed offence U/s.4 of Protection of Children from Sexual Offences Act, 2012.

DECISION AND REASONS THEREOF:

- 10. In this prosecution case, PW-1 Abdul Aziz is the informant, PW-2 Anjuma Bibi is the mother of the alleged victim and PW-3 'X' is the alleged victim.
- 11. PW-1 Abdul Aziz has stated in his evidence that the occurrence took place five months ago. 'X' is his granddaughter, she is about 16/17 years old. On the day of occurrence in the evening, the accused came to their house and had talk with his granddaughter. At such, the villager caught the accused. The villagers asked him to lodge case against the accused and accordingly he lodged the ejahar, Ext-1 & Ext-1(1) is his signature.

In his cross, PW-1 has stated that both his granddaughter and the accused read in the same class and both of them are friend. The accused did not commit rape on his granddaughter. He has no allegation against the accused.

12. PW-2 Anjuma Bibi has stated in her evidence that five months ago, the accused came to their house to meet 'X'. Both the accused and 'X' read in the same class and they are friend. The villagers then asked them to lodge criminal case against him. The accused did not commit rape on 'X'.

In her cross, PW-2 has stated that the accused did not commit rape on her daughter.

13. PW-3 'X' has stated in her evidence that informant is her father and the accused is her class mate. On the day of occurrence, the accused came to their house and he had talk with her. The accused is her friend, so they were talking freely in their house. The villagers suspected them and they asked her grandfather to lodge criminal case against the accused. She gave her statement before the Magistrate, Ext-2 is her statement and Ext-2(1) is her signature.

In her cross, PW-3 has stated that the accused neither committed rape on her nor he did any wrong against her. She has no objection if the accused gets acquittal. She gave her statement Ext-2 as per instruction of villagers.

14. Thus, careful scrutiny of evidence of PW-1,2 and PW-3, it appears that PW-1 being the informant has clearly stated that he lodged Ext-1, the ejahar as per suggestion of the villagers, but the accused did not do anything to her granddaughter. Same is the evidence of PW-2, the mother of the alleged victim. PW-2 has reiterated in her evidence that the accused neither committed rape on her daughter nor did anything wrong against her daughter. PW-3 who is the alleged victim has made it clear that the accused is her class mate and they were talking at the time of occurrence. But the villagers misunderstood the same and they asked her family members to lodge case against the accused. It is reiterated by PW-3 that the accused did not commit rape on her.

So, there is no inculpatory evidence adduced by PW-1,2 and PW-3 against the accused. All the witnesses have sternly denied in their respective evidence to commit rape on 'X'.

15. Sec.4 of POCSO Act reads as follows:

"Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall be liable to fine."

The provision is itself clear that there must be penetrative sexual assault on the victim to attract Sec.4 of POCSO Act. In this case instant, there is no such evidence adduced by the prosecution witnesses that there was penetrative sexual assault on 'X' by the accused. So, no evidence is available to prove the ingredients as required U/s.4 of POCSO Act.

- 16. The prosecution evidence, thereby, found not satisfactory and sufficient to prove the offence as alleged against the accused. The prosecution evidence is found dearth of merit.
- 17. The prosecution has failed to prove it's case U/s.447/ I.P.C R/W Sec.4 of POCSO Act against the accused beyond all reasonable doubt.

Held, the accused is not guilty U/s.447 I.P.C R/W Sec.4 of POCSO Act.

Accordingly, the accused is acquitted and set at liberty. The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal of the court on this 29th day of September, 2018.

Transcribed & Typed by

Addl. Sessions Judge
Dhubri

Stenographer
Court of the Addl.Sessions Judge
Dhubri

APPENDIX

Prosecution Witnesses

PW-1 Abdul Aziz PW-1
PW-2 Anjuma Bibi PW-2
PW-3 X/the victim PW-3

Defence Witness :- NIL.

Prosecution Exhibits:

Ext-1 Ejahar

Ext-2 Statement of the victim U/s.164 Cr.P.C

Addl. Sessions Judge Dhubri