IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE CUM-SPECIAL JUDGE :::::::: DHUBRI

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

SPECIAL CASE NO.95 OF 2018

U/s.448/376 I.P.C R/W Sec.4 of Protection of Children from Sexual Offence Act

> State of Assam Vs Mohijul Seikh

> >Accused Person.

Date of Framing Charge: 04-10-2018

Dates of Recording Evidence :-29-10-2018

12-11-2018

Date of Argument :- 16-11-2018

Date of Judgment :- 16-11-2018

Advocates Appeared:

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

Learned Addl.P.P.

For the Defence :- Shri I.U. Ahmed

Learned Advocate.

J U D G M E N T

- 1. This case is under section 448/376 I.P.C R/W Sec.4 of Protection of Children from Sexual Offences Act, so, the name of the victim is not mentioned here and she is hereinafter referred to as 'X'.
- 2. The prosecution case, in brief, is that Joymon Bewa, the informant lodged an ejahar with the Superintendent of Police, Dhubri on 14.5.015 informing that 'X' is the grand-daughter of informant. In the month of January, 2015, the accused Mofijul

Seikh went to the house of informant. The said accused taking the advantage of absence of other family members, gagged the mouth of 'X' and committed rape on her. The said accused Mofijul Seikh threatened 'X' not to divulge the said occurrence. 'X', thereafter, became pregnant. When the accused namely Bahar Ali, Moinuddin Seikh, Nur Alom and Monjuwara Bibi were informed about the occurrence, they kept the accused Mofijul Seikh confined somewhere.

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

- 3. The Superintendent of Police, Dhubri received the ejahar and forwarded the same to Dhubri Police Station to register a case and to investigate the case.
- 4. The Dhubri Police Station received the ejahar and registered a case vide Dhubri Police Station Case No.648/015 U/s.448/376/294/506/34 I.P.C R/W Sec.4 of Protection of Children from Sexual Offence Act. The case was investigated and having found prima facie U/s.448/376 I.P.C R/W Sec.4 of Protection of Children from Sexual Offence Act against the accused Mofijul Seikh laid the chargesheet before the court for trial.
- 5. The accused Mofijul Seikh appeared in the court of the chief Judicial Magistrate, Dhubri and he was furnished copy. Learned chief Judicial Magistrate having found the case U/s.448/376 I.P.C R/W. Sec.4 of Protection of Children from Sexual Offence, hereinafter called POCSO, committed to the court of Special Judge, Dhubri.
- 6. The Special Judge, Dhubri transferred the case to this court for trial.
- 7. The accused Mofijul Seikh, hereinafter called the accused, appeared in this case. Charge was framed U/s.448/376 I.P.C R/W Sec.4 of POCSO Act. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

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- 8. The prosecution, in order to bring home the charge against the accused, examined 5 (five) witnesses, namely --
 - 1. X/the victim PW-1
 - 2. Joymon Bewa PW-2
 - 3. Moidan Ali PW-3
 - 4. Intaz Ali PW-4
 - 5. Ayesha Bibi PW-5
- 9. Since there found no incriminating evidence adduced by the prosecution witnesses against the accused, so, he is not examined U/s.313 Cr.P.C.
- 10. Heard argument for both sides.

11. **POINTS FOR DETERMINATION**:

- (i) Whether the accused in the month of January, 2015 at village Kuntirchar Part-II under Dhubri Police Station committed house trespass by entering into or unlawfully remaining in the house of the informant with intent to commit rape on her grand-daughter 'X' and thereby committed offence U/s.448 I.P.C.
- (ii) Whether the accused in the month of January, 2015 at village Kuntirchar Part-II under Dhubri Police Station committedrape on the grand-daughter of the informant 'X' and there by committed offence U/s.376 I.P.C.
- (iii) Whether the accused in the month of January, 2015 at village Kuntirchar Part-II under Dhubri Police Station committed penetrative sexual assault on the minor grand-daughter of the informant 'X' and thereby committed offence U/s.4 of POCSO Act.

DECISION AND REASONS THEREOF:

- 12. In this prosecution case, PW-1 'X' is the alleged victim, PW-2 Joymon Bewa is the informant, PW-3 Moidan Ali, PW-4 Intaz Ali and PW-5 Ayesha Bibi are the independent witnesses.
- 13. Now let us see the evidence on record.

PW-1 'X' has stated in her evidence that Joymon Bewa, the informant is her grandmother. She had love affair with the accused. When she told her parent about her love affair with the accused, her parents and family members offered a proposal to the parents of the accused. But the parents of the accused did not accept the proposal. At such, the case was lodged by her grand-daughter. Later on, the accused married her and they are now living as husband and wife. PW-1 has also stated that prior to the occurrence, the accused had not performed any voluptous relation with her. She gave her statement before the Magistrate, but the said statement was as per instruction from other, Ext-1 is her statement, Ext-1(1) is her signature.

In her cross, PW-1 has stated that she was 18 years at the time of occurrence. She gave birth to a child. She has been maintaining a coupled life with the accused.

14. PW-2 Joymon Bewa has stated in her evidence that 'X' is her grand-daughter. There was love affair between 'X' and the accused but the accused did not marry her for which she lodged this case against the accused. She gave thumb impression on the ejahar she lodged. The accused, later on, married her grand-daughter 'X' and they are continuing marital life.

Cross examination of PW-2 was declined by the defence.

- 15. PW-3 Moidan Ali has stated in his evidence that he knows both informant and the accused and also 'X'. There was love affair between 'X' and the accused. 'X' became pregnant as a result of their voluptous relation between them. When the accused refused to marry 'X', the case was lodged against the accused. Later on, both of them got married and they are maintaining marital life.
- 16. PW-4 Intaz Ali has stated in his evidence that he knows both the informant and the accused who are now living together as husband and wife.

17. PW-5 Ayesha Bibi @ Khatun has stated in her evidence that he knows both the informant and the accused and also 'X'. There was love affair between the accused and the 'X'. As a result of their voluptous relation, 'X' became pregnant. The accused refused to marry 'X'. At such, this case was lodged. Now the accused and 'X' got married and they are now maintaining conjugal life.

In her cross, PW-5 denied that 'X' did not become pregnant as a result of voluptous relation between the accused and 'X'.

- 18. Thus, careful scrutiny of evidence of PW-1 to PW-5 shows that PW-1 'X' is the alleged victim who has clearly stated in her evidence that there was love affair between her and the accused. When the accused refused to marry her, they lodged this case. But the accused then married her and both of them maintaining a coupled life. There is no evidence adduced by PW-1 that the accused committed rape on her. The evidence of PW-1 is also clear that she was above eighteen years old at the time of occurrence. So, there was any sexual relation between two, then it was consensual.
- 19. Same in the evidence of PW-2 Joymon Bewa. She has also adduced evidence that when the accused refused to marry her grand-daughter 'X', she lodged the case against the accused. But the accused, thereafter, married 'X'. So, the evidence of PW-2 is also not inculpatory against the accused.
- 20. The evidence of PW-3,4 and PW-5 is also same way. All of them have clearly stated in their respective evidence that both the accused and 'X' are now maintaining their conjugal life. PW-3,4 and PW-5 have adduced no incriminating evidence against the accused.
- 21. Thus, prosecution evidence does not reflect that the accused entered into the house of informant and committed penetrative sexual assault on 'X' or there was forceful relation on Contd.Page-6.

'X' by the accused. The prosecution evidence is not sufficient and satisfactory to establish that the accused entered into the house of the informant and committed sexual assault on 'X'. The prosecution evidence is found dearth of merit. The prosecution, thereby, has failed to prove it's case U/s.448/376 I.P.C R/W Sec.4 of POCSO Act against the accused beyond all reasonable doubt.

- 22. Held, the accused is not guilty U/s.448/376 I.P.C R/W Sec.4 of POCSO Act.
- 23. The accused is accordingly, 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 this court on this 16th day of November, 2018.

Transcribed & Typed by

Stenographer Court of the Special Judge Dhubri Addl.Sessions Judge Cum-Special Judge Dhubri

APPENDIX

Prosecution Witnesses

PW-1 X/the victim

PW-2 Joymon Bewa

PW-3 Moidan Ali

PW-4 Intaz Ali

PW-5 Ayesha Bibi @ Khatun

Defence Witness :- NIL

Prosecution Exhibits:

Ext-1 Ejahar

Ext-2 Statement of X/informant.

Addl. Sessions Judge Cum-Special Judge Dhubri