#### **DISTRICT: DHUBRI**

## IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

# Special Case No. 30 of 2015

(Under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012)

State of Assam .....Complainant

Versus

Rabial Sheikh ... Accused

Charge framed on : 27-04-2016

Evidence recorded on : 31-05-2016, 14-12-2016& 09-02-2017.

Statement recorded on : 22-03-2017 Arguments heard on : 22-03-2017

Judgment delivered on : 28-04-2017

## Advocates who appeared in this case are:

ShriManiruzZaman, P.P. for the Prosecution ShriR.K. Jain, Advocate, for the Defence

## JUDGMENT

- 1. This case was registered on 10-05-2015, at Tamarhat Police Station, under sections 376/341/323/34of the Indian Penal Code, 1860 (in short "the IPC"),r/w Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act"), based on a First Information Report (in short "the FIR")filed by the prosecutrix against accused1. Robial Sheikh, 2. Miss Mayna Khatun, 3. Miss Aziran and 4. the mother of the accused Robial Sheikh.
- **2.** The case of the prosecution, as stated in the FIR, is that at the relevant time, the prosecutrix was working as a labour in the brick Kiln of one Khairul Alom Mia. Sincesix

months prior to filing of the instant FIR, making false promise of marriage, the accused was maintaining sexual relation with the prosecutrix. On 10-05-2015, at about 11:00 a.m., as per the instruction of the accused, the prosecutrix went to the house of the accused, but the members of the family of the accused (the accused Nos.2, 3 and 4), assaulted her, at which, the President and the Secretary of the Village Defence Party came forward and promised tosettle the matter andtook time for the same till 02:00 p.m. of 11-05-2015. But, as they did nothing, the prosecutrix filed the instant FIR.

- **3.** On receiving the FIR, the Officer In-charge of the Tamarhat Police Station registered the case No. 131/2015, for commission of offences punishable under sections376,341,323/34 IPC, r/w Section 4 of the POCSO Actagainst the accused persons and entrusted the ASI of Police Chandra Kanta Barman to investigate the case. Accordingly, he investigated the case. During the course of investigation, the prosecutrix was medically examined. Her statement was recorded by the Magistrate u/s 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C.") and after completing the investigation, a charge sheet was filed against the accused Robial Sheikh only, for commission of offences punishable under sections 341, 376 IPC,r/w section 4 of the POCSO Act in this Court as the offences under the POCSO Act are triable by the Special Court and this court has been designated as the Special Court to try offences under the POCSO act.
- **4.** During trial, my learned predecessor framed charges under section376 IPC and Section 4 of the POCSO Act against the accused person. When the contents of the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried.
- **5.** The prosecution, in order to prove its case, examined as many as ten witnesses. The accused did not examine any witness.
- **6.** In his examination under section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations levelled against him are false and baseless.
- 7. The points for determination in this case are:I)Whether the accused Robial Sheikh committed rape on the prosecutrix making false promise of marriage and thereby committed an offence punishable under section 376 IPC?

II)Whether the accused Robial Sheikh committed penetrative sexual assault on the prosecutrix, who was a child under 18 years of age at the relevant time and thereby committed an offence punishable under section 4 of POCSO Act?

If so, what punishment he deserves?

## **DECISION AND REASONS THEREOF**

**8.** I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsels for both the sides give my decision on the above point as follows:-

#### **POINT NOS. I & II**

- **9.** These two points are relating to crime against child less than eighteen years of age. Hence, these issues are discussed and decided jointly.
- 10. The prosecutrix (PW-6) has deposed that the accused Robial Sheikh is her neighbour. One night, the accused came to her house and asked her for sexual favour, but she refused to meet the demand of the accused. At that time, her mother and her eight/nine years old brother were present at the house and she was inkitchen. The father of the accused saw the accused entering into their house. Thereafter, on several occasions, the accused came to her house. On the day of the alleged incident, at about 11:00 p.m., the accused asked her to come out of her house and when she went out, the accused gave her a tablet to swallow. After swallowing the tablet, she became unconscious and then the accused committed rape on her and abandoned her. After regaining senses, she returned to her home. The accused assured her that he will marry her. Later on, the accused refused to marry her.
- **11.** In the cross examination, she has stated that One Abul Hussain had accompanied her to this court to adduce his evidence in this case. Abul Hussain is the father of one Mizanur. Abul is his uncle and she had been visiting the house of Abul since long back. After the present case was filed, Mizanur married another girl. She

hasfiled this case at the instigation of Mizanur. She has stated before the police about the accused giving her a tablet and getting unconscious after taking the tablet and then about accused committing rape on her. She has denied the suggestion that she did not state as such before the police and neither mentioned the same in the FIR. But, the suggestion is true. She has denied the suggestion that whatever she has stated today in the court, she did not state the same before the Magistrate in her statement u/s 164 CrPC. Her father had died around 20 years ago. Jote and Khushi are her elder sisters and they have their children. Her younger brother is a daily wage worker. There are several houses surrounding her house. Earlier, she used to liveatvillage Polashkandi. She shifted to the present village two months before filingof the instant case. There is only one room in her house. She resides in the said roomalong with her brother and mother. Champa Bewa is her aunt. On the day of alleged occurrence, all the members of her family i were present inside the room. They did not oppose to the accused having sexual intercourse with her in their presence. She has filed the present case two months after the alleged occurrence. The tablet wrapper had been taken away by the accused. The accused had asked her to take one tablet and the accused himself had taken another tablet. After taking those tablets both of them became unconscious. After regaining their consciousness, they went to their respective houses. She has denied the suggestion that she had an affair with Mizanur and Mizanur's father persuaded her to go to the house of the accused in order to get the accused framed in a false case of rape. . She has denied the suggestion that the accused did not commit rape on me and did not visit her house. . She has denied the suggestion that on the day of alleged occurrence, the accused did not ask her to consume any tablet and she did not became unconscious consuming the tablet. . She has denied the suggestion that she has spoken about consumption of the tablet for the first time in the Court today. She has stated before the M.O. regarding consumption of tablet. She has denied the suggestion that at the relevant time, she was not 16 years old. She has denied the suggestion that presently, she is 23 years old. . She has denied the suggestion that she has deposed falsely.

**12.**Thus, the prosecutrix has deposed a completely different story then the one stated by her in the FIR in as much as, in the FIR she has stated that she was maintaining sexual relation with the accused as the accused promised to marry her, bit has deposed

nothing of the short and has deposed about one incident of rape only. Further, the prosecutrix has deposed that on the day of the alleged occurrence, at about 11:00 p.m., the accused gave her a tablet to swallow and after swallowing the tablet, she became unconscious and then the accused committed rape on her but, she has stated in the FIR that at that time, she went to the house of the accused as per the instruction of the accused Robial Sheikh, the accused Nos.2, 3 and 4 assaulted her. Therefore, she has deposed falsely and hence, her testimony is unbelievable.

- **13.** Further, none of the prosecution witnesses have deposed that they have seen the alleged incident. Whereas, P.W. 1 Mohammad Ali, P.W. 3 Md. Golapuddin Sheikh, P.W. 7 Abdul Hoque and P.W. 8 Bahaj Ali Sheikh have deposed that they heard about the alleged incident, PW-2 Md. Al Anis Mia, PW-4 Hanif Ali and PW-9 Sahiron Bewahave deposed nothing about the alleged incident. Further, lo and behold, PW-9 Sahiron Bewa, who happens to be the mother of the prosecutrix, has deposed that there was a *salish* (village meeting) at their village and the Dewani (Leader) of the village presided over the said meeting. In the cross-examination, she has stated that there was a rumor in their village about her daughter's illicit relation with one Mizanur, son of Abdul Hoque. Therefore, this false case of rape has been filed against the accused Robial Sheikh to save the said Mizanur.
- **14.** PW-5 Dr. (Mrs) Rinku Ahmed, who had examined the prosecutrix has deposed that she did not find any sign of recent sexual intercourse.
- **15.** PW-10 Chandra Kanta Barman, the Investigating Officer is merely a formal witness of the case.
- **16.** Thus there is no evidence to hold the accused guilty of committing the alleged offences. Hence, the points are decided in the negative.

#### <u>ORDER</u>

**17.** In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has failed to bring home the charges under section376 IPC

## Special Case No. 30 of 2015

and Section 4 of the POCSO Act against the accused. Hence, he is acquitted. His bail bond stands cancelled. He is set at liberty forthwith.

**18.** Signed, sealed and delivered in the open Court on this the 28thday of April, 2017, at Dhubri.

(A. Chakravarty) Sessions Judge, Dhubri

Dictated & corrected by me.

(A. Chakravarty) Sessions Judge, Dhubri

## **APPENDIX**

#### 1. PROSECUTION WITNESSES:

P.W. 1 Mohammad Ali

P.W. 2 Md. Al-Anis Miah

P.W. 3 Md. Golapuddin Sheikh

P.W. 4 Md. Hanif Ali

P.W. 5 Dr. (Mrs) Rinku Ahmed

P.W. 6 Fatema Khatun

P.W. 7 Abdul Hoque

P.W. 8 Bahaj Ali Sheikh

P.W. 9 Sohiron Bewa

P.W.10 ASI Chandra Kanta Barman

## 2. PROSECUTION EXHIBIT:

Exhibit- 1 Medical Report
Exhibit- 2 Medical Report
Exhibit- 3 FIR
Exhibit-4 Site plans
Exhibit-5 Charge-sheet.

(A.Chakravarty)

Special Judge, Dhubri