Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge,

Cachar, Silchar.

Spl(POCSO) Case No. 05 / 2019 u/s 4 of the POCSO Act The State of Assam

-Versus-

Jashim Uddin Barbhuiya

..... accused person

Dates of evidence: 13.12.19

Date of argument : 13.12.19

Date of judgment : 13.12.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. D.H.Mazumder. Ld. Advocate

J U D G M E N T

- 1. The brief facts of the prosecution case is that the informant cum victim had lodged an ejahar dated 18.4.16 stating that prior to two months from the date of lodging the FIR i.e. on 18.4.16 at Barjatrapur under Borkhola P.S the accused committed rape upon the victim -informant and the accused also committed penetrative sexual assault upon the victim.
- 2. Accordingly, on receipt of the ejehar, police registered a case being Borkhola P.S Case No.126/16 u/s 417/376 of the IPC. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 4 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court. Thereafter, on 20.3.19 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Jashim Uddin Barbhuiya has appeared before this court and on 26.4.19 after hearing the prosecution and the defence counsel, this court was pleased to frame charge u/s 4 of the POCSO Act against the accused person and its particular was read over and explained to him to which the accused pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced, during which the prosecution examined the informant -victim of the case as the P.W.1 .The Ld. Spl.P.P has submitted that the prosecution evidence may be closed as the informant victim has not supported the case of the prosecution. In view of the evidence of the P.W.1, the statement of the accused person u/

s 313 of the Cr.P.C is dispensed with as informant-victim i.e. the P.W.1 has failed to implicate the accused person with the alleged offence.

5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

6. **Point for determination:-**

(i)Whether prior to two months from the date of lodging of the FIR i.e. on 18.4.16 at Barjatrapur under Borkhola P.S the accused person committed rape upon the victim -informant and that the accused person also committed penetrative sexual assault upon the victim -informant, as alleged?

Discussion, Decision and Reasons Thereof:-

- 7. In this case the prosecution side examined only the informant victim of the case as the P.W.1.
- 8. The P.W.1 is the victim of the case and she deposed that the occurrence took palce in the year 2016. She also stated that she was in love affairs with the accused and eloped with the accused and stayed as husband and wife at his rented house at Itkhola for about a month and thereafter she went to his house but his in laws did not allow her to stay there and then she came back to her parents house and lodged the FIR. The said FIR is brought on record as the Ext.1. She also stated that she was medically examined and her statement u/s 164 of the Cr.P.C was also recorded. The said statement is brought on record as the

Ext.2. The P.W.1 further stated that her husband took her to his house and presently she is staying with her husband i.e the accused peacefully. She also stated that at the time of occurrence, she was 18 years old.

During cross-examination the P.W.1 admitted that her present age is 22 years and the occurrence took place about 3 years ago. She also stated that as the family of her in laws had not accepted her and did not allow her to say in their house so she filed the ejehar as per advice of the villagers. During cross-examination she admitted that the villagers written the FIR and she only put her signature over it and that she does not know the contents of the FIR. The P.W.1 i.e. the victim also stated during her cross-examination that presently she is living with the accused as his wife peacefully and that she has no grievances against the accused person.

- 9. Appreciating the materials on record, it is found that though the informant P.W.1 during her deposition before the court has failed to implicate the accused person rather she gave clean chit to the accused by stating that presently she is living with the accused as his wife in his house. That apart, the victim in her evidence also stated that at the relevant time of occurrence she was 18 years of old.
- 10. In view of the above position, I am of the opinion that the prosecution side failed to prove that the victim is below 18 years of age at the time of occurrence. That apart, the victim has implicated the accused person in respect of the offence charged

against the accused person i.e. the offence u/s 4 of the POCSO Act.

- 11. It is the bounden duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt.
- 12. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

ORDER

13. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 4 of the POCSO Act against the accused person present today beyond reasonable doubt. As a result, the accused person namely, Jashim Uddin Barbhuiya is acquitted and set at liberty.

Set my hand and seal of this case on the 13th day of December, 2019.

(Mr.D.Ullah),

Special Judge, Cachar, Silchar.

Dictated & corrected by me;

Special Judge, Cachar, Silchar.

APPENDIX

A.Prosecution Witnesses:-

P.W.1-victim

B.Prosecution Exhibits:-

Ext.1-FIR

Ext.2-statement u/s 164 of the Cr.P.C

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah), Special Judge, Cachar, Silchar.

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