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

SPECIAL CASE NO.108 OF 2018

U/s.376(2)(i) of Indian Penal Code U/s.4 of Protection of Children from Sexual Offences Act,2012

> State of Assam Vs Samsul Hoque @ Samsul Sk

> >Accused Person.

Date of Framing Charge :-12-12-2018

Dates of Recording Evidence :-21-12-2018

03-01-2019

Date of Argument :- 03-01-2019

Date of Judgment :- 03-01-2019

Advocates Appeared:

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

Learned Addl.P.P.

For the Defence :- Shri G. Ahmed

Learned Advocate.

<u>J U D G M E N T</u>

- 1. This case is U/s.376(2)(i) I.P.C and Section 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 'X'.
- 2. The prosecution case, in brief, is that Rabeya Beya, the informant lodged an ejahar with Golakganj Police Station on 12.8.2014 informing that 'X' is the minor daughter of the informant. On 2.8.014, there was none in the house of the informant except her daughter 'X'. The accused Samsul Hoque, conspired by the accused Dil Mohammad, entered into the

household compound of the informant and he committed sexual intercourse with 'X'. when the accused wanted to go away after commission of rape, the villagers caught hold of the accused Samsul Hoque. One Maharuddin Bepari took away the accused giving promise that he would arrange a meeting. The informant waited for village meeting, but it did not hold.

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

- 3. The Golakganj Police Station received the ejahar and registered vide Golakganj Police Station Case No.612/014 U/s.120(B)/447/376(1)(i)/420/34 I.P.C R/W Sec.4 of Protection of Children from Sexual Offences Act. The case was investigated by the police and having found prima facie U/s.120(B)/447/376(1) (i)/420/34 I.P.C R/W Sec.4 of Protection of Children from Sexual Offences Act, in short, POCSO against the accused Samsul Hoque @ Samsul Seikh laid the charge sheet before the court for trial.
- 4. The accused Samsul Hoque @ Samsul Seikh appeared in the court of Special Judge, Dhubri. The Hon'ble Special Judge received the case and transferred to this court for trial.
- 5. The accused Samsul Hoque @ Samsul Seikh, hereinafter called the accused, appeared in this case. He was furnished copy. Charge was framed U/s.376(2)(i) IPC and Sec.4 of POCSO Act against the accused. The charge was read over and explained 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 4 (four) witnesses, namely --

 Rabeya Bewa 	PW-1
2. X/the victim	PW-2
3. Gul Majar Seikh	PW-3
4. Jakiron Bibi	PW-4

- 7. Since there found no incriminating evidence adduced by the prosecution witnessess against the accused, so the accused was not examined U/s.313 Cr.P.C.
- 8. Heard argument for both sides.

9. **POINTS FOR DETERMINATION**:

- (i) Whether the accused on 2.8.018 at about 4-00 in the afternoon at village Biskhowa Part-V under Golakganj Police Station committed rape on the daughter of the informant 'X' under the age of sixteen and thereby committed an offence U/s.376(2)(i) I.P.C.
- (ii) Whether the accused on 2.8.018 at about 4-00 in the afternoon at village Biskhowa Part-V under Golakganj Police Station committed penetrative sexual assault on the daughter of the informant 'X' and thereby committed offence U/s.4 of POCSO Act.

DECISION AND REASONS THEREOF:

- 10. In this prosecution case, PW-1 Rabeya Bewa is the informant, PW-2 'X' is the alleged victim, PW-3 Gul Mazar Seikh and PW-4 Jakiron Bibi are two independent witnessess.
- 12. Let us now go through the evidence available on record.

PW-1 Rabeya Bewa has stated in her evidence that she is the informant in this case and she lodged the case against the accused. The accused is their relative. He used to visit their house now and then. The villagers asked her to lodge this case against the accused and accordingly she followed it. Ext-1 is the said ejahar and Ext-1(1) is her signature.

In her cross, PW-1 has stated that she did not read the ejahar. The villagers wrote the ejahar and he signed it. The accused did not perform any sexual intercourse with her daughter nor he did any evil against her.

13. PW-2 'X' has stated in her evidence that the accused used to visit their house. He did not commit sexual intercourse on her. PW-2 has also stated that the villagers compelled her mother to lodge the case against the accused. She gave her statement before the Magistrate and she gave the said statement as per instruction of the villagers.

In her cross, PW-2 has stated that she was 20 years at the time of occurrence. There was enmity between the villagers and them. The accused did not commit sexual intercourse with her.

14. PW-3 Gul Mazar Seikh has stated in his evidence that he knows nothing about the occurrence. There was hue and cry in the village, but he did not know the cause behind it.

In his cross, PW-3 has stated that the villagers prepared a false story. The accused did not do any evil on 'X'.

15. PW-4 Jakiron Bibi has stated in her evidence that she knows nothing about the occurrence nor she heard about it.

In her cross, PW-4 has stated that she resides nearby the house of the informant.

16. Thus, careful scrutiny of evidence of prosecution witnessess 1 to 4, it appears that PW-1 being the informant and PW-2 being the alleged victim has adduced evidence not incriminating the accused. Both of them sternly denied to commit sexual intercourse with PW-2 'X'. They also categorically denied to perform any evil on 'X'. They have, rather, stated that it is the village people who compelled them to lodge the case against the accused. Both PW-1 and PW-2 have admitted in their respective evidence that the accused used to visit their house. But the accused is their relative. There was enmity between villagers and the family of the informant. This enmity led the villagers to instigate the informant to lodge the case against the accused. PW-1, the informant has stated in her evidence that she only signed

the ejahar, Ext-1. She did not know the content of it. PW-2 who is the alleged victim sternly denied to commit sexual intercourse on her by the accused. She reiterated in her evidence that the accused being relative to their family used to visit their house and for this act, the village people, out of enmity, compelled her mother to lodge the case against the accused. PW-2 has also stated that she gave her statement before the Magistrate as taught by the villagers.

17. Thus, there found no inculpatory evidence adduced by the prosecution witnessess against the accused. The prosecution evidence is not sufficient and satisfactory to prove the offences as alleged against the accused.

The prosecution has failed to prove it's case U/s.376(2)(i) I.P.C and Sec.4 of POCSO Act.

18. Held, the accused is not guilty U/s.376(2)(i) I.P.C and U/s.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 this court on this 3rd day of January,2019.

Transcribed & Typed by

Special Judge Dhubri

Court of the Special Judge

Stenographer

Dhubri

Contd.Page-6.

APPENDIX

Prosecution Witnesses

PW-1 Rabeya Bewa

PW-2 X/the victim

PW-3 Gul Mazar Seikh

PW-4 Jakiron Bibi

Defence Witness:- Nil

Prosecution Exhibits

Ext-1 Ejahar

Special Judge Dhubri