#### IN THE COURT OF THE ADDITIONAL SESSION JUDGE::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

## <u>Special (POCSO) 56/2019</u> <u>U/S 376(3)/506 IPC R/W Section 8 of POCSO Act</u>

## **State of Assam**

-Vs-

Farijul Hoque.....Accused.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. T. C. Boro, Learned Advocate.

Date of Evidence : 03-02-20: 13-02-20.

Date of Argument : 14-02-2020.

Date of Judgment : 14-02-2020.

#### **JUDGMENT**

- 1. The prosecution case in brief is that on 14-12-2018, at about 05 pm, while the victim girl was alone at her home the accused took her to his home on the pretext that she was called by his mother. When the victim entered into the house of the accused to meet his mother, the accused forcibly committed rape upon her. Therefore, father of the victim lodged FIR with the Officer-in-Charge of Kalaigaon P.S.
- 2. On the basis of the FIR, Kalaigaon PS Case No. 142/18, under Section 376DA/506 IPC, R/W Section 4 of POCSO Act was registered. After completion of investigation Police submitted charge-sheet under Section

376(3)/506 IPC R/W Section 4 of POCSO Act against the accused Farijul Hoque.

- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 376(3)/506 IPC R/W Section 8 of POCSO Act, learned Special Judge framed charges thereunder and the ingredients of charges under Section 376(3)/506 IPC R/W Section 8 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 03-02-2020, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 04(four) witnesses:

PW1- Victim-A.

PW2- Yakub Ali.

PW3- Dr. H.K. Gayari.

PW4- Inspector Bhaba Nanda Deka.

- 5. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the point for determination in the instant case is set up as follows:-
  - (I) Whether the accused committed rape on victim-A, a girl under 16 years of age?
  - (II) Whether the accused committed criminal intimidation by threatening victim-A with threat to kill her if she divulge the matter to others?

(III) Whether the accused committed sexual assault upon the victim-A, aged about 14 years?

#### **DISCUSSION, DECISION AND REASON FOR DECISION:**

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T. C. Boro.
- 8. Learned defence counsel has argued that the victim girl was major at the time of incident as deposed by the victim herself and informant. The informant had deposed that due to misunderstanding the case was lodged. In her statement recorded under Section 164 Cr.P.C, she disclosed that she eloped away with the accused on her own accord. Therefore, the ingredients of Section 376(3)/506 I.P.C., R/W Section 8 of POCSO Act have not been established in the present case against the accused person.
- 9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is the victim girl, daughter of informant. In her evidence PW1 had deposed that accused is her closed door neighbor. On 14-12-18, at about 05 pm, she went to the house of the accused on her own volition without informing her parents due to having love affairs with him. When her father did not find her at home till late in the night, lodged an FIR against the accused on the suspicion of kidnapping her, but the accused neither kidnapped nor did any sexual assault on her. My father out of misunderstanding lodged the FIR against the accused, who was going to marry her shortly as her father has also given consent to that. At the time of occurrence she was above 18 years. After lodgment of the FIR police arrested the accused. PW1 was produced before the Magistrate to get her statement recorded under Section 164 Cr.P.C. She was also sent for medical examination by the Doctor. Ext.-1 is her statement under Section

164 Cr.P.C. Ext.-1(1) and Ext.-1(2) are the signatures of PW1. In her statement also she disclosed that she eloped away with the accused on her own accord. In cross-examination, PW1 had stated that she was not compelled by the accused to go to his house nor did the accused outrage her modesty in any form.

- 11. PW2 is Yakub Ali, father of the victim girl. In his evidence PW2 had deposed that at the time of occurrence victim was above 18 years. On the date of occurrence, about 2 years ago at about 05 pm, his daughter without informing them went to somewhere. Later on, when he did not find his daughter at his home, he suspected that the accused might have kidnapped his daughter so he lodged an FIR against him before the police. Subsequently, she herself came to their home and told before them that she went to the house of the accused voluntarily and the accused neither kidnapped her nor molested her at his house. PW2 also came to know from his daughter that she had love affairs with the accused since before the incident as such she went to his house as per her own wish though later she returned home after lodgment of the FIR. Police arrested the accused on the basis of PW2's FIR. After lodgment of the FIR, he realized his misunderstanding regarding the matter. PW2 had no grievances against the accused and he is going to give marriage of his daughter with the accused very soon. PW2 put his thumb impression in his FIR. In crossexamination, PW2 had stated that only due to sheer misunderstanding he lodged the FIR against the accused.
- 12. PW3 is Dr. Hiranya Kumar Gayari. In his evidence PW3 had stated that on 17.12.2018, he was working as M&H.O1 at Udalguri Civil Hospital. On that day, he examined the victim girl, vide reference to Kalaigaon PS case No. 142/2018 U/S 376 DA/506 IPC r/w sec 4 of POCSO Act. The girl was examined in presence of Jwngthima Baglari. On examination, he found the following:-

Physical examination:-

Height- 140 cm, weight- 40 Kg, teeth- 15/15, auxillary hair- present, pubic hair- present, breast- developed, vaginal injury-absent, hymen-absent, marks of violence-absent, Clothing's- pink shallower kurta,

Smear examination vide Red No. 58264/18 lab report no. 404 shows no spermatozoa seen in this slide.

#### **RADIOLOGICAL EXAMINATION:-**

X-ray for age determination plate No. RXIC A 848 dated 18-12-2018 shows radiological age approximately 16-17 years.

Epiphyseal union completed in upper end of radius and ulna and lower end of humerus. Epiphyseal union not completed in lower end of radius and ulna and in iliac crest.

Ultrasonography of Abdomen on 18/12/18 reported as (I) Microlithiasis in Right kidney. (II) Rest of the organs shows normal echofeature.

PW3 had deposed in his opinion that

- (1) BHCG report awaited.
- (2) Approximate age 16-17 (Sixteen to seventeen years).
- (3) USG @Microlithiasis in right kidney. Rest of the organs shows normal echofeature.

Ext.2 is the report and Ext.2(1) is the signature of PW3.

In cross-examination, PW3 had stated that on examination he did not find any mark of violence on her person.

13. PW4 is Inspector Bhaba Nanda Deka. In his evidence PW4 had deposed that on 15-12-2018, he was posted as O/c of Kalaigaon PS. On that day, on receiving a written FIR lodged by Eyakub Ali, he registered Kalaigaon PS case No. 142/18 U/S 376 DA/506 IPC r/w section 4 of POCSO act and endorsed the case to SI Nagar Ali Sarkar for investigation. After completion of investigation, SI Nagar Ali Sarkar on being transferred from Kalaigaon PS handed over the case diary to him. As investigation has already been completed by him therefore upon perusal of materials on CD, he submitted charge-sheet against accused Farijul Hoque U/S 376(3)/506 IPC r/w section 4 of POCSO act. In the FIR, the informant had put thumb

impression. Ext-3 is the FIR. Ext-3(1) is the signature under the registration note. Ext-4 is the charge-sheet. Ext-4(1) is the signature of PW4. Cross-examination of PW4 had been declined by the defence.

- 14. On appraisement of the evidence on record it appears that on the date of occurrence PW1, the victim girl on her own volition went to the house of the accused without informing her parents. Then her father lodged the FIR. PW1 had love affairs with the accused and after filing she returned back to her home and informed her parents that the accused neither kidnapped her nor committed sexual assault upon her. The medical evidence also does not reveal any sign of sexual assault upon the victim. PW1, the victim as specifically stated in her evidence that at the time of occurrence she was above eighteen years old. Thus she has attained the age to give a valid consent under the law. The evidence on record clearly reveals that the accused neither committed sexual assault upon the victim nor intimidated her. PW2, the informant of the instant case clearly stated in cross-examination that due to sheer misunderstanding he lodged the FIR against the accused.
- 15. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 376(3)/506 IPC R/W Section 8 of POCSO Act against the accused person beyond all reasonable doubt.
- 16. Situated thus the points for determination are decided in the negative and against the prosecution.

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

17. In the result, the accused Farijul Hoque is found not guilty under Section 376(3)/506 IPC R/W Section 8 of POCSO Act and acquitted of charges under Sections 376(3)/506 IPC R/W Section 8 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.

18. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.

19. Judgment is signed, delivered and pronounced in the open court today the 14<sup>th</sup> day of February, 2020.

#### **Dictated and Corrected**

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

### IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

# Special (POCSO) 56/2019 APPENDIX

(A) Prosecution Exhibits :

Ext.-1 : Statement of victim u/S 164 Cr.P.C.

Ext.-2 : Medical report.

Ext.-3: FIR.

Ext.-4 : Charge sheet.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Victim-A.

PW2- Yakub Ali.

PW3- Dr. H.K. Gayari.

PW4- Inspector Bhaba Nanda Deka.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N. Talukdar) Addl. Sessions Judge. Udalguri.