IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

# Spl. (POCSO)Case No. 20/2017 u/s 366-A/376 IPC r/w Sec. 4 of POCSO Act 2012

(Arising out of G.R. Case No. 302/2016)

State of Assam

-VS-

Sri Anup Dunggal @ Sharma

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Committed by: learned SDJM (M), Gohpur



For the prosecution: Mr. J. Bardoloi, learned Addl. P.P.

For the defence : Mr. A. Borah, learned Advocate.

Date of recording Evidence: 02.08.2018. Date of Argument : 02.08.2018.

: 02.08.2018. Date of Judgment

## JUDGMENT

- 1. The prosecution case in brief is that on 02.11.2016 the informant (name is withheld) lodged an FIR with the O/C Halem P.S. stating inter-alia that on 01.11.2016 at about 6.30 PM when she was on her way to her uncle's house, the accused Anup Dunggal met her on her way and forcibly took her by gagging her mouth to the bank of the river where he forcibly committed rape on her. She stated that the accused had left her in an unconscious state but when she regained her sense, she went to her uncle's house and described him about the incident.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused u/s 376 IPC r/w Section 4 of POCSO Act, 2012. After appearance of the accused before the Court of learned SDJM, Gohpur, the copies of the relevant documents were furnished to him and as the offences charged are exclusively triable by the Court of Sessions, the case was

committed, which was later made over to this Court for disposal.

- 3. The accused in due course appeared before this Court to face trial. The copies of the relevant documents were furnished to him and upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this Court found grounds for presuming that the accused had committed an offence punishable u/s 376 IPC, r/w Section 4 of POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused person pleaded not guilty.
- 4. During trial, the prosecution examined the informant/victim as PW 1. Looking into her evidence, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Taking note of the materials on record including the Medical Examination Report of the alleged victim, the prosecution evidence was closed. As no incriminating evidence was found against the accused his examination u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.



## Points for determination

- i) Whether the accused on the day of the alleged occurrence committed rape on the said victim?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below 18 years of age?

## Discussion, Decision and Reasons thereof

- 5. PW 1 is the alleged victim. She testified that the accused is her husband. According to her, on 01.11.2016 when she was strolling around with the accused, as they had love affair, the public caught them and took them to the Police Station where she out of fear lodged the FIR against the accused. She was medically examined thereafter and her statement was recorded u/s 164 CrPC. She stated that she was 21 years of age at that relevant time. However, later, she married the accused and they have a 9 month old child out of their wedlock. She proved her FIR as Ext. 1 and her statement recorded u/s as Ext. 2. In her cross-examination, she stated that she is living with the accused happily and he is innocent. She further stated that she lodged the FIR out of misunderstanding.
- 6. In the evidence of PW1- the informant/victim, we do not find any material to convict the accused on the alleged offence. The medical examination report as is available in the case record shows that it supported the age told by her in the Ext. 2, which is 19 years. The doctor examining her opined that the victim was above 17 years old. The victim therefore appears to be not under 18 years of age. I therefore find that the prosecution

Add. Sessions Judge Some

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has failed to prove its case. As such, I acquit the accused person from the offences charged against him and set him at liberty forthwith. The petition no. 1526/18 filed by the accused u/s 437-A CrPC is allowed upon hearing both the sides. His bail bond is extended for a period of six months. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 2<sup>nd</sup> day of August, 2018.



(D. BORA) 81 Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

> Addl. Sessions Judge Biswanath Chariali, Sonitpur

# ANNEXURE

Witnesses examined by the Prosecution: PW1- Victim

Exhibits proved by the prosecution witnesses:

Exhibit-1: FIR.

Exhibit-2: Statement u/s 164 CrPC.



Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addl. Sessions Juliana Biswanath Chariali, Sonitput