

DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:- Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 20th day of November, 2018.

SPECIAL (P) CASE NO: 10 OF 2018

Under Section

4 of the Protection of Children

from Sexual offences Act, 2012.

Read With

376(1) of the Indian Penal Code.

State of Assam

-Versus-

1. Sri Dilip Karmakar.

..... Accused Person.

This case was taken up for final hearing on 15.11.2018 in the presence of **Sri Basanta Gogoi......** Advocate for prosecution side. **Sri Junumoni Boragohai......** Advocate of the accused.

F.I.R was lodged on ::::::::::: 25.02.2013.

Charge framed on :::::::::: 30.07.2018.

Argument Heard on ::::::::: 15.11.2018.

Judgment Delivered on ::::::::: 20.11.2018.

Տրесіаł Judge Charaideo, Sonari



<u>JUDGMENT</u>

In this case the accused person is facing trial under section 4 of the P.O.C.S.O act 2012, and alternatively Under Section 376(i) I.P.C

- 1. The case of the prosecution is that, the accused Sri Dilip Karmakar, on 24/02/13 at 12 noon, came to the house of the informant, with the pretext to put air in to his cycle, and committed rape on the minor sister of the informant. That, the accused also threatened the victm.
- 2. That, after this incident, the informant filed an ejahar before the Tingalibam Police outpost. Later on a case was registered in this regard, before the Sonari Police station, bearing its P.S case no 55/13. Police after investigation forwarded chare sheet u/s 366(F) I.P.C against the accused person. Thereafter, case was committed and charge U/S 4 POCSO act 2012 read with 376(i) I.P.C was framed against the accused person. The charge was read over and explained to the accused person, to which he, pleaded not guilty and claimed to be tried. Prosecution examined 2 witnesses.
- 3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

4. Points For Determination in this case are:-

i) Whether the accused on 24/02/2013, committed penetrative sexual assault on the sister of the informant Sri Dilip Garh, who was below 18 years at that time?



(6)



ii) and alternatively, whether the accused on 24/02/13, committed rape on the minor sister of the informant, who at that time was 16 years old?

5. <u>DISCUSSION DECISION AND REASONS FOR THE DECISION</u>

Let us now, discuss evidences on record, concerning the points for determination of this case. In this case the alleged victim was examined as P.W2, the P.W2 in her evidence deposed that, informant is her brother. That, the incident took place 07 years ago at 10 A.M. That, she was alone in her house and then accused came, for which she got frightened. That, her brother lodged this case in vain. That, nothing happened. In cross examination this P.W deposed that, accused is not guilty of anything.

I have considered the evidence of the alleged victim. The alleged victim in her evidence deposed that accused is not guilty.

6. Here in this case the P.W1 is the brother of the alleged victim and he in evidence deposed that, he knows the accused. That, victim is his sister. That, the incident took place 07 years ago. That, he was not present at he time of the incident. That, after coming to his house he came to know that, accused came, earlier. That, no incident took place. In the cross examination this P.W deposed that, out of anger, he lodged this false case.

I have considered the evidence of the P.W1/informant/brother of the victim and the P.W2 i.e. the victim. They both in evidence deposed that no incident took place. Through the evidence the informant and the P.W2 as witness failed to place any specific evidence concerning any of the point for determination, rather it is yielded from there evidence that no incident took place.

7. I have considered evidences of the P.W1 and P.W2 and found that, they never adduced any evidence from which it can be gathered that accused is liable to

Special Judge Charaideo, Sonari

W.



E)

the alleged incident. The alleged victim, her father never deposed anything conserning any of the points for determination.

- 8. I have considered the evidences on record, which includes the evidence of the prosecutrix and I find that, there is no iota of evidence to bring the accused person within the ambit of section 376(1) of I.P.C or section 4 of the POCSO act, 2012 as the alleged victim and other witness never deposed anything in evidence against the accused, concerning any of the points for determination. Here in this case the prosecution has failed to adduce any evidence basing on which we can held that, prosecution has proved the case beyond all reasonable doubt.
- 9. This being the position of this case, in opinion of this court, prosecution has failed to prove the case against the accused person and accordingly the accused Sri Dilip Karmakar is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision 437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 20^{th} day of November 2018.

(Spenman)dge
Charaideo, Sonari

Additional Sessions Judge.

Charaideo, Sonari.



Appendix

Prosecution Witnesses.

Sl. 1---- Prosecution Witness 1 ---Shri Dilip Garh.

SI. 2---- Prosecution Witness 2 --- Alleged victim.

Prosecution Exhibits.

Sl. 1---- F.I.R.

Sl. 1(1)- Signature of the informant.

Defence witness.

Nil.

Defence Exhibit.

Nil

(S.I.Rahman) Special Judge

Charaideo, Sonari Additional Sessions Judge

Charaideo.